

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BASECAP ANALYTICS INC.

Plaintiff,

- against -

ROBERT K. AMENN

Defendant.
-----X

23-cv-9370 (MKV)(RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

TRANSCRIPT of Proceedings re: Discovery Conference held on 1/25/2024 before Magistrate Judge Robert W. Lehrburger. The Teams transcript is an unofficial and uncertified transcript printed from the Teams recording function.

SO ORDERED.



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: January 25, 2024

New York, New York

Copies transmitted this date to all counsel of record.

0:0:0.0 --> 0:0:0.380

Judge Robert W Lehrburger
All right.

0:0:2.530 --> 0:0:3.450

Judge Robert W Lehrburger
It is working alright.

0:0:3.460 --> 0:0:5.820

Judge Robert W Lehrburger
We are being recorded and transcribing.

0:0:6.250 --> 0:0:15.40

Judge Robert W Lehrburger
We are here for the matter of the base CAP analytics versus Robert Amen 23CV9370 parties.

0:0:15.50 --> 0:0:17.250

Judge Robert W Lehrburger
Please put in their appearances, starting with the plaintiff.

0:0:19.80 --> 0:0:19.930

Stein, Wendy R.
Thank you, your honor.

0:0:20.300 --> 0:0:24.920

Stein, Wendy R.
Wendy Stein from Ballard Spar on behalf of the plaintiff base Cap analytics.

0:0:27.500 --> 0:0:27.790

Judge Robert W Lehrburger
OK.

0:0:27.360 --> 0:0:30.530

Peerce, Marjorie
Runner Marjorie Pierce, also on behalf of Base cap.

0:0:27.770 --> 0:0:30.670

Stein, Wendy R.
Our largely Pierce also when we have a base camp.

0:0:32.690 --> 0:0:33.90

Judge Robert W Lehrburger
Alright.

0:0:32.540 --> 0:0:35.330

Sivakumar, Madhundra
Maddie Sivakumar, on behalf of base cap as well.

0:0:36.720 --> 0:0:37.330

Judge Robert W Lehrburger
Alright.

0:0:37.380 --> 0:0:39.330

Judge Robert W Lehrburger
And Mr Hohman, I see you.

0:0:39.340 --> 0:0:40.200

Judge Robert W Lehrburger
How are you this morning?

0:0:40.830 --> 0:0:41.150

Robert Amenn
Very good.

0:0:41.160 --> 0:0:41.420

Robert Amenn
Thank you.

0:0:41.960 --> 0:0:42.710

Judge Robert W Lehrburger
All right.

0:0:42.900 --> 0:0:52.400

Judge Robert W Lehrburger
And I see Mr Whitney and Mr Eastham who, or with the firm the Archer firm, is it right?

0:0:54.860 --> 0:0:55.30

Judge Robert W Lehrburger
OK.

0:0:55.590 --> 0:0:56.300

Jeff Whitney
Yes, I'm with.

0:0:56.310 --> 0:0:57.220

Jeff Whitney
I'm with Archer Hall.

0:0:57.660 --> 0:0:58.50

Judge Robert W Lehrburger
OK.

0:0:57.630 --> 0:1:0.80

Jeff Whitney
I believe Tom Plunkett may be joining as well.

0:1:1.520 --> 0:1:2.160

Judge Robert W Lehrburger
And there he is.

0:1:4.280 --> 0:1:5.920

Judge Robert W Lehrburger
Mr Plunkett, can you hear you're on mute?

0:1:7.630 --> 0:1:8.480

Tom Plunkett
Yes, I can hear.

0:1:8.490 --> 0:1:9.750

Tom Plunkett
I'm gonna get my video on.

0:1:9.760 --> 0:1:10.810

Tom Plunkett
I apologize for my delay here.

0:1:11.390 --> 0:1:12.30

Judge Robert W Lehrburger
Not a problem.

0:1:14.390 --> 0:1:27.550

Judge Robert W Lehrburger
Alright, so uh it is very common in trade secret disputes of this nature to have forensic examinations done of electronic devices.

0:1:27.940 --> 0:1:40.70

Judge Robert W Lehrburger
The parties often and usually are able to agree upon a protocol occasionally, such as in this situation, the parties cannot resolve their dispute and the court is called upon to do so.

0:1:40.540 --> 0:1:54.130

Judge Robert W Lehrburger
I am going to rule on what is in and what is kept and that is just going to be the way it is and Mr Annan, I understand if and you tell me if I'm wrong, that your main concerns appear to be.

0:1:55.0 --> 0:1:55.790

Judge Robert W Lehrburger
Uh.

0:1:56.180 --> 0:2:2.130

Judge Robert W Lehrburger
Information that you consider attorney client privileged or confidential as to third parties.

0:2:2.140 --> 0:2:2.750

Judge Robert W Lehrburger
Is that correct?

0:2:3.690 --> 0:2:4.920

Robert Amenn
That's that's my main.

0:2:5.50 --> 0:2:21.740

Robert Amenn
That that's the main thrust I would add that I also like the base cap not to know my client list so that that is another concern of mine because they've I've lost income because of base caps communicating my clients and I prefer not that for that not to happen again.

0:2:22.550 --> 0:2:30.860

Robert Amenn
And I'd also like to preserve on anything that I have to deal with my IP dispute with them and some contracts disputes I have with Basecamp.

0:2:33.400 --> 0:2:47.140

Robert Amenn
Those are secondary concerns, but the primary concerns are making sure that third party confidential information that I signed NDA's not to release is not released and returning current privileges for emails that I sent as part of my business.

0:2:48.90 --> 0:2:49.880

Judge Robert W Lehrburger
OK, alright.

0:2:49.890 --> 0:2:54.290

Judge Robert W Lehrburger
And and as I understand it, the and you tell me if I'm wrong.

0:2:54.300 --> 0:2:58.0

Judge Robert W Lehrburger
The plaintiff doesn't disagree with that in principle, or do you?

0:2:59.240 --> 0:3:0.190

Stein, Wendy R.
Correct, your honor.

0:3:0.200 --> 0:3:14.540

Stein, Wendy R.
We do not wanna see his privilege information, but we will just clarify that there was only one entity that we spoke with about our information, not many entities as defendant just stupid.

0:3:13.820 --> 0:3:17.90

Robert Amenn
No, I apologize for Miss, Miss, I didn't mean to characterize mischaracterize.

0:3:17.100 --> 0:3:23.590

Robert Amenn

I feel that if you find other clients because you keep asking me who I'm working for, you will visit them and that is a concern of mine.

0:3:24.250 --> 0:3:24.490

Judge Robert W Lehrburger
Right.

0:3:25.420 --> 0:3:27.620

Judge Robert W Lehrburger
Ah, alright.

0:3:25.90 --> 0:3:28.610

Robert Amenn

Base CAP will not miss time when I refer to it's base camp.

0:3:28.990 --> 0:3:41.210

Judge Robert W Lehrburger

Well, what I'm going first, let me ask have any further has there been any further progress between the time I issued my order and today Miss Stein?

0:3:41.80 --> 0:3:41.810

Stein, Wendy R.

I like to.

0:3:42.120 --> 0:3:42.900

Stein, Wendy R.

Yes, thank you.

0:3:42.910 --> 0:3:44.370

Stein, Wendy R.

Are no, there's not been.

0:3:44.480 --> 0:3:46.590

Stein, Wendy R.

We tried to make progress.

0:3:46.700 --> 0:4:4.330

Stein, Wendy R.

We actually circulated to the defendant on January 15th and amended protocol, implementing Your Honor's orders at ECF 54 and the defendant refused to accept those orders in particular refused to accept that Archer Hall was designated as the Examiner.

0:4:4.850 --> 0:4:5.400

Judge Robert W Lehrburger

I understand.

0:4:4.950 --> 0:4:5.840

Stein, Wendy R.

And then we had.

0:4:5.410 --> 0:4:8.940

Judge Robert W Lehrburger

He he, yeah, alright, he he asked me to reconsider.

0:4:8.950 --> 0:4:20.160

Judge Robert W Lehrburger

I understand that I'm overruling the request for reconsideration too much time and effort has been put into working on a protocol with Archil Hall.

0:4:20.390 --> 0:4:22.600

Judge Robert W Lehrburger

Everything appears quite neutral.

0:4:22.750 --> 0:4:36.350

Judge Robert W Lehrburger

They do not appear biased anyway and they appear quite capable of doing what the protocol requires and protecting information that should not be seen by the plaintiffs.

0:4:36.920 --> 0:4:37.680

Judge Robert W Lehrburger

So that is.

0:4:36.930 --> 0:4:39.300

Robert Amenn

You you were on our I I did not.

0:4:39.310 --> 0:4:44.90

Robert Amenn

At this moment in time, I intend to make the request, but I have not made the request at this moment in time.

0:4:43.370 --> 0:4:46.920

Judge Robert W Lehrburger

Well, you did in your letter that you sent to me and I'm overruling it.

0:4:47.770 --> 0:4:55.960

Judge Robert W Lehrburger

I'm denying the motion for reconsideration with respect to the terms of the protocol.

0:4:55.970 --> 0:5:17.820

Judge Robert W Lehrburger

I am gonna go through the version that I have which was the version that was sent by Mr Amen to Miss Stein and Mr Pierce on January 5th that had Mr Amends proposed edits to the version that had last been proposed by Miss Stein.

0:5:17.830 --> 0:5:20.170

Judge Robert W Lehrburger

Because that's the last version I have.

0:5:20.820 --> 0:5:25.450

Judge Robert W Lehrburger

Will that will that result in any problem this time?

0:5:26.700 --> 0:5:28.70

Stein, Wendy R.

Your Honor, I don't.

0:5:28.220 --> 0:5:34.270

Stein, Wendy R.

The last protocol that I have on the docket IS62-1 I don't know which EF number you're referring to right now.

0:5:34.470 --> 0:5:35.810

Judge Robert W Lehrburger

I'm looking at 51 three.

0:5:37.200 --> 0:5:38.260

Stein, Wendy R.

51 three.

0:5:45.820 --> 0:5:47.140

Stein, Wendy R.

Sorry, I'm just getting in on it please.

0:5:55.210 --> 0:5:59.560

Stein, Wendy R.

Umm, so that one has all of the red lining from the defendant.

0:5:59.780 --> 0:5:59.950

Judge Robert W Lehrburger

Yes.

0:6:9.320 --> 0:6:9.730

Stein, Wendy R.

And.

0:6:13.420 --> 0:6:13.670

Stein, Wendy R.

Yeah.

0:6:13.690 --> 0:6:15.90

Stein, Wendy R.

So there there would be a a.

0:6:16.180 --> 0:6:20.500

Judge Robert W Lehrburger

Right, which is the one which is the one that you you are working off of what was?

0:6:20.600 --> 0:6:20.910

Robert Amenn

I'm.

0:6:20.40 --> 0:6:21.630

Stein, Wendy R.

UH-62-1.

0:6:22.290 --> 0:6:23.670

Judge Robert W Lehrburger

I'm sorry, 62-1.

0:6:24.170 --> 0:6:24.750

Stein, Wendy R.

Yes, your honor.

0:6:42.820 --> 0:6:43.80

Chuck Easttom (Guest)

The.

0:6:22.890 --> 0:6:47.230

Robert Amenn

To I would object to that usage because the plaintiff has made at least one significant change to an item that they had previously agreed to and that is in the protocol like that is outlined in the protocol that I sent, that you have, your honor, it has to deal with six E they significantly change stuff that we already agreed to.

0:6:48.40 --> 0:6:48.910

Judge Robert W Lehrburger

Hey, hold on a SEC.

0:6:53.420 --> 0:7:8.140

Judge Robert W Lehrburger

So I still I would find it useful to work off of the 51-3 because it gives me a road map as to what Mr Rahman had last proposed and what his concerns are.

0:7:8.550 --> 0:7:18.100

Judge Robert W Lehrburger

And I I also received Mr Ohman, you're filing today that set forth issues that you wanted to raise.

0:7:18.610 --> 0:7:27.350

Judge Robert W Lehrburger

And I've looked through that as well and I have it in front of me, but I think this is the most efficient way to proceed.

0:7:28.160 --> 0:7:34.830

Judge Robert W Lehrburger

So in the introduction, there's the issue of the, I guess, who?

0:7:34.840 --> 0:7:35.810

Judge Robert W Lehrburger

The consultant is.

0:7:36.40 --> 0:7:38.990

Judge Robert W Lehrburger

We're gonna go there with Plaintiffs proposal.

0:7:39.800 --> 0:7:40.820

Judge Robert W Lehrburger

The way it's worded there.

0:7:42.630 --> 0:7:56.200

Judge Robert W Lehrburger

4th then we get to section 2B and Mr Ohman you introduced a considerable uh new language here.

0:7:56.210 --> 0:7:59.360

Judge Robert W Lehrburger

What were you trying to accomplish and why wasn't it sufficient?

0:8:0.30 --> 0:8:1.130

Robert Amenn

Yeah. Just give me a second.

0:8:1.140 --> 0:8:3.90

Robert Amenn

Let me get my my notes here.

0:8:4.80 --> 0:8:11.590

Robert Amenn

Umm, the concerns that I have are one for the first section the let the let me.

0:8:11.980 --> 0:8:13.430

Robert Amenn

Let me deal with them one at a time.

0:8:13.820 --> 0:8:15.450

Robert Amenn

So I introduced.

0:8:16.550 --> 0:8:19.0

Robert Amenn

I introduced new language on 2B11.

0:8:19.10 --> 0:8:19.320

Robert Amenn
Right.

0:8:19.330 --> 0:8:22.330

Robert Amenn
So my concern is that.

0:8:24.110 --> 0:8:39.190

Robert Amenn
I this is going to trigger additional, umm going to trigger additional potential request to see other hard drives, potentially third party hard drives, third party connections and I want it to be very clear that they're done.

0:8:39.520 --> 0:8:51.370

Robert Amenn
If I actually moved files that are base cap confidential information and those files were materially damaging, like for example, someone sent me a congratulatory email.

0:8:51.640 --> 0:9:8.440

Robert Amenn
If I happen to save that to an external drive, the way I read this section, it would mean that base CAP would be able to I seek access go to the Court and seek access to my other hard drives and my other machines and other third party machines.

0:9:8.630 --> 0:9:11.800

Robert Amenn
So I wanna make sure that that anything that got moved.

0:9:12.620 --> 0:9:24.470

Robert Amenn
Umm, that's gonna trigger this event should be confidential information as defined by the the, the, the, the our agreement and that it's causes material harm like like if it's if it's a base camp.

0:9:25.290 --> 0:9:26.600

Judge Robert W Lehrburger
I understand the concern.

0:9:24.520 --> 0:9:27.300

Robert Amenn
If if Steve Smith said great job, yeah.

0:9:26.650 --> 0:9:28.120

Judge Robert W Lehrburger
I I understand the concern.

0:9:30.250 --> 0:9:30.450

Robert Amenn
Yep.

0:9:28.230 --> 0:9:32.860

Judge Robert W Lehrburger

You don't want this triggered by innocuous documents that you otherwise have the right to possess.

0:9:32.610 --> 0:9:35.60

Robert Amenn

Yes, that's that's one point.

0:9:33.730 --> 0:9:37.880

Judge Robert W Lehrburger

OK, so Miss Stein, can you speak to that concern please?

0:9:38.470 --> 0:9:39.240

Stein, Wendy R.

Yes, your honor.

0:9:39.470 --> 0:9:48.550

Stein, Wendy R.

So in this search terms, in the beginning on December 6th, we had sent search terms that were much broader than the search terms that we have now.

0:9:49.130 --> 0:9:54.540

Stein, Wendy R.

The search terms that we have now that we agreed to with defendant are file names of base cap files.

0:9:55.130 --> 0:10:2.750

Stein, Wendy R.

So if base cap files were moved anywhere, their base cap files, so we submit that section 2B should stay as it is.

0:10:3.430 --> 0:10:15.550

Judge Robert W Lehrburger

Meaning you're saying under the protocol and the search terms that you've narrowed it down to, you believe that no innocuous material would be caught.

0:10:17.490 --> 0:10:37.400

Stein, Wendy R.

With the exception of the base cap search term and that's the one we agreed with defendant that he could have time to look at those and if he believed that things were privileged, for example, we would agree not to look at those, that kind of thing, but the other terms are actual file names of files that he looked at in his final hours of employment.

0:10:37.410 --> 0:10:39.630

Stein, Wendy R.

And we believe transferred to other devices or accounts.

0:10:40.130 --> 0:10:46.340

Judge Robert W Lehrburger

OK, Mr Mr Rahman, with that narrowing, why should we be concerned with the what?

0:10:46.350 --> 0:10:47.330

Judge Robert W Lehrburger
You're you have raised.

0:10:48.250 --> 0:11:5.490

Robert Amenn

So it when I asked the defendant a probing question and I said to the defendant if if some because this happened, if a base cap employee sent me an email by accident because they had access to my my email address and you know they.

0:11:4.940 --> 0:11:7.910

Judge Robert W Lehrburger

Right, But that's not going to be caught by this narrow search terms.

0:11:7.920 --> 0:11:8.480

Judge Robert W Lehrburger

Why would it be?

0:11:9.30 --> 0:11:20.280

Robert Amenn

It would be caught by narrow certain like it it when I read this here they're they're not talking about the search terms, only their.

0:11:20.350 --> 0:11:31.290

Robert Amenn

There's been talk where that if they find the search term within a file that is not a base cap file, that if I renamed one of their files then then that would be.

0:11:31.350 --> 0:11:35.960

Robert Amenn

That would be a hit, and then they would use the file name as an expanded search term.

0:11:36.470 --> 0:11:37.380

Judge Robert W Lehrburger

OK, so hold.

0:11:37.390 --> 0:11:37.900

Judge Robert W Lehrburger

So hold on.

0:11:37.910 --> 0:11:40.170

Judge Robert W Lehrburger

So, Miss, Miss, Miss Stein, it does appear that.

0:11:42.780 --> 0:11:44.810

Judge Robert W Lehrburger

Hold on. Just.

0:11:48.620 --> 0:11:49.230

Judge Robert W Lehrburger
You mean you?

0:11:49.240 --> 0:11:50.970

Judge Robert W Lehrburger
You, you say in here.

0:11:51.40 --> 0:12:0.540

Judge Robert W Lehrburger
Base camp the the the terminology used in this provision is based cap information is that limited to what is found through the search terms.

0:12:1.780 --> 0:12:2.630

Stein, Wendy R.
Yes, your honor.

0:12:2.640 --> 0:12:6.350

Stein, Wendy R.
The protocol has a list of search terms and we can screen share if you'd like.

0:12:6.360 --> 0:12:6.940

Stein, Wendy R.
They are.

0:12:7.360 --> 0:12:8.450

Judge Robert W Lehrburger
Yeah, I don't need to see them.

0:12:7.60 --> 0:12:8.480

Stein, Wendy R.
They are the ones that are gone.

0:12:8.460 --> 0:12:8.910

Judge Robert W Lehrburger
I just.

0:12:11.460 --> 0:12:11.580

Stein, Wendy R.
Yes.

0:12:9.60 --> 0:12:13.690

Judge Robert W Lehrburger
I wanna know though in this paragraph too the language is written.

0:12:13.700 --> 0:12:21.220

Judge Robert W Lehrburger
What happens it to the base cap information that is located through the search terms on his laptop?

0:12:22.100 --> 0:12:27.10

Judge Robert W Lehrburger

In other words, the way it's it was written by you, it seems like it could apply to any base cap information.

0:12:27.100 --> 0:12:29.900

Judge Robert W Lehrburger

Or does base cap information have a definition of some sort?

0:12:31.0 --> 0:12:31.460

Stein, Wendy R.

Umm.

0:12:31.520 --> 0:12:41.330

Stein, Wendy R.

And so well base cap information is defined in the NDIA, but are you talking about little one now in the event that defendant locates other devices or accounts?

0:12:39.80 --> 0:12:41.940

Judge Robert W Lehrburger

Yes, yes, yes.

0:12:44.840 --> 0:12:44.980

Judge Robert W Lehrburger

Yeah.

0:12:46.340 --> 0:12:47.960

Judge Robert W Lehrburger

Containing base cap information.

0:12:48.830 --> 0:12:49.370

Stein, Wendy R.

Right.

0:12:49.430 --> 0:12:55.400

Stein, Wendy R.

So once the search terms the run and the Archer Hall sees for example, let's say.

0:12:57.340 --> 0:13:2.750

Stein, Wendy R.

Loop task list Dot loop he sent it somewhere like his personal email.

0:13:5.510 --> 0:13:11.360

Stein, Wendy R.

Then we would like to come back and be able to search where he sent our files to.

0:13:12.160 --> 0:13:14.310

Judge Robert W Lehrburger

No, I understand, but that's not it doesn't appear.

0:13:14.320 --> 0:13:17.110

Judge Robert W Lehrburger

That's what this says because it says base cap information.

0:13:29.60 --> 0:13:29.540

Stein, Wendy R.

Yes, you're.

0:13:17.400 --> 0:13:31.750

Judge Robert W Lehrburger

If base cap information in this paragraph is limited to the files or search terms that you have implemented, then I think it may be appropriate, but I understand his concern that as written it's too broad.

0:13:32.780 --> 0:13:33.150

Stein, Wendy R.

OK.

0:13:33.160 --> 0:13:39.70

Stein, Wendy R.

So we would agree to define base cap information as results of the search terms as applied.

0:13:40.60 --> 0:13:41.390

Judge Robert W Lehrburger

Yes, in this paragraph.

0:13:43.260 --> 0:13:45.940

Judge Robert W Lehrburger

OK, Mr Rahman, what's the you said?

0:13:45.950 --> 0:13:47.0

Judge Robert W Lehrburger

There were a few concerns here.

0:13:47.10 --> 0:13:47.970

Judge Robert W Lehrburger

That's one concern.

0:13:47.980 --> 0:13:48.680

Judge Robert W Lehrburger

What's the next?

0:13:48.290 --> 0:13:48.720

Robert Amenn

Yes.

0:13:49.110 --> 0:15:3.360

Robert Amenn

So with respect to to be I right, they they they wanted me to like it would be triggered that if I keep in

my testimony it's not clear to me is it specific to the testimony on the device or does it specific cover all the testimony that I gave in the hearing like for example if if Miss Stein asked me how many iPhones I have if I actually and I answered four and if I actually had five would that trigger this event and I'd like to restrict the misrepresentation to only regarding the device the device is not not all my testimony because you know I was under tremendous pressure and I've made I've made a may have made a misstatement and I don't want that misstatement a minor misstatement to trigger this this this protocol like to be and so that I'd like to restrict one to be you know hearing regarding like defendant represents as stated at the hearing regarding devices are are are inaccurate if if I said anything about the devices that are inaccurate then they could trigger this protocol but not if I said something else that was inaccurate because I'm sure I made mistakes in my testimony it was tremendously pressured period.

0:15:4.150 --> 0:15:4.610

Judge Robert W Lehrburger
Right.

0:15:4.810 --> 0:15:8.0

Judge Robert W Lehrburger
And UM, miss stained.

0:15:8.50 --> 0:15:11.30

Judge Robert W Lehrburger
Is that language necessary?

0:15:11.40 --> 0:15:17.470

Judge Robert W Lehrburger
The defendants representations, as stated in the hearing, can't it just be in the event defendant locates other devices or account?

0:15:18.340 --> 0:15:24.730

Stein, Wendy R.
You know, your Honor, because he's made representations at the hearing that the base cap information is only on one laptop.

0:15:24.980 --> 0:15:29.260

Judge Robert W Lehrburger
No, I I I understand but essentially.

0:15:28.730 --> 0:15:31.260

Stein, Wendy R.
And he's made other kinds of representations at the hearing.

0:15:31.270 --> 0:15:32.10

Stein, Wendy R.
We we can't.

0:15:32.110 --> 0:15:34.350

Stein, Wendy R.
We do not agree to limit in the way he's suggesting.

0:15:34.760 --> 0:15:42.940

Judge Robert W Lehrburger

Well, I'm not suggesting that your ability to get other devices would be limited, isn't it?

0:15:43.300 --> 0:15:47.280

Judge Robert W Lehrburger

Just if there any other devices besides the laptop in question?

0:15:49.460 --> 0:15:52.40

Stein, Wendy R.

We had, I think an 84 page transcript.

0:15:52.50 --> 0:15:56.860

Stein, Wendy R.

I'm not sure if they were a lot of questions asked and and I we can't.

0:15:56.870 --> 0:16:5.550

Stein, Wendy R.

I don't think it's fair to the client if they were misrepresentations made about what he's doing with the information where it went, how often he logged on to the device.

0:16:4.170 --> 0:16:5.980

Judge Robert W Lehrburger

No, I I I understand.

0:16:6.90 --> 0:16:7.880

Judge Robert W Lehrburger

We're talking past each other, I think.

0:16:9.810 --> 0:16:16.460

Judge Robert W Lehrburger

Your concern is if there's any other device that has potentially has base cap confidential information.

0:16:16.470 --> 0:16:16.920

Judge Robert W Lehrburger

Now yes.

0:16:17.140 --> 0:16:18.310

Stein, Wendy R.

It's not just that, your honor.

0:16:18.290 --> 0:16:18.740

Judge Robert W Lehrburger

Ah, OK.

0:16:21.320 --> 0:16:22.560

Judge Robert W Lehrburger

OK, OK.

0:16:18.320 --> 0:16:23.50

Stein, Wendy R.

I'm also concerned with the deletions, so the the whole reason we're here is, yeah.

0:16:22.570 --> 0:16:26.200

Judge Robert W Lehrburger

Deletions, 2 deletions 2 why does it but?

0:16:28.270 --> 0:16:38.830

Judge Robert W Lehrburger

I'm not getting how the clause defendants representations are inaccurate defines the scope and makes a broader than what you would otherwise be entitled to.

0:16:41.160 --> 0:16:45.860

Judge Robert W Lehrburger

Since there's language in there that says in the event that defendant locates other devices or accounts.

0:16:49.150 --> 0:16:53.110

Judge Robert W Lehrburger

Why isn't that enough just to say, if he locates other devices or account?

0:16:55.690 --> 0:17:3.920

Stein, Wendy R.

Because if he made an inaccurate statement at the hearing, we need to be able to know what that is and we need to be able to act on that information.

0:17:5.0 --> 0:17:5.160

Judge Robert W Lehrburger

But.

0:17:5.120 --> 0:17:8.250

Stein, Wendy R.

It's not just about devices, it's also about when he deleted things.

0:17:8.560 --> 0:17:12.250

Stein, Wendy R.

It's also about whether he complied with the preservation order, which we believe he has not.

0:17:12.300 --> 0:17:14.330

Stein, Wendy R.

There are many, many statements he made at the hearing.

0:17:14.450 --> 0:17:15.20

Judge Robert W Lehrburger

Hold on.

0:17:14.340 --> 0:17:15.180

Stein, Wendy R.

He's trying to limit them.

0:17:15.30 --> 0:17:16.100

Judge Robert W Lehrburger
Hold, hold, hold.

0:17:16.110 --> 0:17:16.660

Judge Robert W Lehrburger
Hold on.

0:17:16.750 --> 0:17:17.30

Judge Robert W Lehrburger
Hold on.

0:17:24.210 --> 0:17:31.610

Judge Robert W Lehrburger
Your concern is if there's any device besides the laptop to which this information has been transferred, right?

0:17:35.460 --> 0:17:36.440

Judge Robert W Lehrburger
OK, ohk.

0:17:32.400 --> 0:17:37.80

Stein, Wendy R.
I'm also concerned with when he deleted our information, when he moved other information.

0:17:36.450 --> 0:17:37.170

Judge Robert W Lehrburger
OK.

0:17:37.340 --> 0:17:51.510

Judge Robert W Lehrburger
OK, but I'm not getting how defendants representation is stated that the hearing aren't accurate is germane to that as opposed to the mere fact that there are in fact other devices.

0:17:51.740 --> 0:17:53.150

Judge Robert W Lehrburger
I mean, how would you know?

0:17:53.940 --> 0:17:59.30

Judge Robert W Lehrburger
How does that predicate part inform this?

0:17:59.80 --> 0:18:5.950

Judge Robert W Lehrburger
Are you saying that through some other evidence you're gonna find these other devices?

0:18:7.400 --> 0:18:7.520

Stein, Wendy R.
Yes.

0:18:5.960 --> 0:18:9.760

Judge Robert W Lehrburger

It but the way it's written it says if defendant locates other devices.

0:18:10.660 --> 0:18:19.90

Stein, Wendy R.

Well, well, that he's trying to take out section 5D of the protocol, which would allow us to see where our confidential information went to.

0:18:24.800 --> 0:18:24.960

Judge Robert W Lehrburger

Yeah.

0:18:19.340 --> 0:18:27.310

Stein, Wendy R.

So a big part of this case is not only did he download our information at a time when he was not supposed to, but where did he move it?

0:18:27.740 --> 0:18:29.690

Judge Robert W Lehrburger

I I I I I understand.

0:18:29.700 --> 0:18:30.950

Judge Robert W Lehrburger

You're entitled to all that.

0:18:31.300 --> 0:18:37.410

Judge Robert W Lehrburger

I just not getting how the your your desire to get any other.

0:18:39.760 --> 0:18:45.10

Judge Robert W Lehrburger

Devices that are located by him it maybe I have this wrong but it is little.

0:18:45.20 --> 0:18:52.610

Judge Robert W Lehrburger

One defendants representations as stated at the hearing, Erin, accurate and then little two are they or.

0:18:53.430 --> 0:18:54.480

Stein, Wendy R.

No, they're different.

0:18:54.690 --> 0:18:55.180

Stein, Wendy R.

It's one.

0:18:55.190 --> 0:18:56.800

Stein, Wendy R.

It's little 1/2 and three.

0:18:57.220 --> 0:18:57.970

Judge Robert W Lehrburger
OK, hold on.

0:18:57.980 --> 0:18:58.320

Judge Robert W Lehrburger
Hold on.

0:18:56.810 --> 0:18:58.330

Stein, Wendy R.
So for example, the way we have it.

0:18:58.330 --> 0:18:58.690

Judge Robert W Lehrburger
Hold on.

0:18:58.700 --> 0:18:59.710

Judge Robert W Lehrburger
OK, so it is or.

0:18:59.720 --> 0:19:1.150

Judge Robert W Lehrburger
OK, so hold on, hold on.

0:19:1.160 --> 0:19:1.510

Judge Robert W Lehrburger
Hold on.

0:19:2.0 --> 0:19:2.690

Judge Robert W Lehrburger
I see.

0:19:2.730 --> 0:19:3.850

Judge Robert W Lehrburger
OK, my bad.

0:19:3.960 --> 0:19:4.910

Judge Robert W Lehrburger
I see it now.

0:19:4.920 --> 0:19:9.810

Judge Robert W Lehrburger
Now that it's taking out the interlineation, it's or so it's additive.

0:19:9.860 --> 0:19:11.300

Judge Robert W Lehrburger
OK, got it.

0:19:13.140 --> 0:19:22.770

Judge Robert W Lehrburger

So, so, so, Mr Ayman, a whether you're representations are inaccurate, would is not defined by this document.

0:19:22.780 --> 0:19:25.70

Judge Robert W Lehrburger

That would be determined in some other way.

0:19:25.220 --> 0:19:35.300

Judge Robert W Lehrburger

So whether this says something is inaccurate doesn't and shouldn't implicate any accusation of misrepresentation.

0:19:37.450 --> 0:19:40.30

Judge Robert W Lehrburger

Because there have to be some other proof of that.

0:19:41.710 --> 0:19:42.60

Judge Robert W Lehrburger

Am I?

0:19:42.70 --> 0:19:43.220

Judge Robert W Lehrburger

Am I correct?

0:19:43.470 --> 0:19:44.780

Judge Robert W Lehrburger

I won't miss Stein.

0:19:44.790 --> 0:19:47.930

Judge Robert W Lehrburger

Wouldn't you have to come forward to show that something was inaccurate?

0:19:54.240 --> 0:19:55.910

Judge Robert W Lehrburger

Right, right, right.

0:19:55.950 --> 0:19:56.330

Judge Robert W Lehrburger

So.

0:19:56.340 --> 0:19:56.710

Judge Robert W Lehrburger

So.

0:19:56.770 --> 0:20:1.260

Judge Robert W Lehrburger

So in other words, Mr Rahman, it it's just sort of a factual statement.

0:20:1.270 --> 0:20:10.320

Judge Robert W Lehrburger

You're not making an admission by entering into this protocol, that something is inaccurate.

0:20:11.150 --> 0:20:17.70

Judge Robert W Lehrburger

But if the plaintiffs are able to show that something was inaccurate, then.

0:20:19.30 --> 0:20:28.110

Judge Robert W Lehrburger

Then they should have the right to pursue it and by using the language in accurate that is neutral as opposed to saying something like a misrepresentation.

0:20:29.420 --> 0:20:32.530

Robert Amenn

So let me put this test case to you to make sure that I understand this.

0:20:32.980 --> 0:20:33.80

Judge Robert W Lehrburger

Yes.

0:20:33.360 --> 0:20:39.270

Robert Amenn

If I actually want, if I I in my statement, I said I had four iPhones.

0:20:39.710 --> 0:20:41.580

Judge Robert W Lehrburger

Umm. Umm.

0:20:39.640 --> 0:20:45.920

Robert Amenn

If I actually have five and they fended, defendant found out that I had five, would this trigger this event?

0:20:46.430 --> 0:20:46.660

Judge Robert W Lehrburger

Sure.

0:20:47.900 --> 0:20:49.830

Robert Amenn

And like I.

0:20:47.680 --> 0:20:50.190

Judge Robert W Lehrburger

Why wouldn't it only only if only?

0:20:51.130 --> 0:20:52.370

Judge Robert W Lehrburger

Yeah, why not.

0:20:53.310 --> 0:21:2.180

Robert Amenn

So I'd like to limit that because that that was that like First off, the defendant didn't have a like, the judge scolded the defendant and asking me that question.

0:21:16.240 --> 0:21:16.520

Judge Robert W Lehrburger
Woman.

0:21:2.190 --> 0:21:17.910

Robert Amenn

I answered it because I was on the old but, but if I make a small misrepresentation that's not material, then this triggers this event and I like to limit my life being turned upside down for something innocuous, not like, not material.

0:21:19.340 --> 0:21:40.420

Robert Amenn

If you want to say material misrepresentation, I'm OK with that, but I don't want like like if I said ohh, you know I I like if I made a like a minor factual thing, it triggers the event and I wanna avoid that because I I'm sure that I made a mistake and I'm sure it's gonna be easy for them to pick something out of my testimony that I said that was false and therefore this event will be triggered and I.

0:21:39.730 --> 0:21:48.110

Judge Robert W Lehrburger

All we're trying to do is figure out if there's another device that has base cap information as determined by this search protocol.

0:21:48.990 --> 0:21:49.320

Judge Robert W Lehrburger
Uh.

0:21:49.450 --> 0:21:53.820

Judge Robert W Lehrburger

That right in this time I, I I understand Mr Anas general concern.

0:21:53.830 --> 0:21:54.680

Judge Robert W Lehrburger
He he figures.

0:22:10.820 --> 0:22:11.730

Stein, Wendy R.

Correct. Yeah.

0:21:54.770 --> 0:22:11.950

Judge Robert W Lehrburger

Look, any misstatement that you find is testimony is somehow gonna lead to saying aha, now we get to look at any other devices, but those devices have to contain, there has to be reason to believe they contain base cap information, right? Yeah.

0:22:14.330 --> 0:22:14.600

Judge Robert W Lehrburger
Kit.

0:22:12.690 --> 0:22:19.470

Robert Amenn

So can we add the term regarding devices, my statements regarding devices are inaccurate and is that sufficient?

0:22:18.480 --> 0:22:19.510

Judge Robert W Lehrburger
No, because it's all.

0:22:19.520 --> 0:22:21.770

Judge Robert W Lehrburger
It's well, it's it's also.

0:22:21.840 --> 0:22:23.470

Judge Robert W Lehrburger
Well, give me another example, Miss Stein.

0:22:23.480 --> 0:22:24.400

Judge Robert W Lehrburger
Of what you have in mind.

0:22:25.160 --> 0:22:25.690

Stein, Wendy R.
Yes.

0:22:30.830 --> 0:22:31.110

Judge Robert W Lehrburger
Right.

0:22:25.700 --> 0:22:33.130

Stein, Wendy R.

And so, for example, a big part of this is he was supposed to delete our information at the end of his employment, and we believe he did not.

0:22:33.140 --> 0:22:38.80

Stein, Wendy R.

He was also supposed to comply with a preservation order dated October 26th, and we also believe he did not.

0:22:38.870 --> 0:22:39.270

Judge Robert W Lehrburger
Right.

0:22:39.310 --> 0:22:40.270

Judge Robert W Lehrburger
OK, hold on.

0:22:39.790 --> 0:22:41.380

Robert Amenn
So that's all related to devices.

0:22:44.170 --> 0:22:44.460

Judge Robert W Lehrburger
Hold on.

0:22:45.350 --> 0:22:45.710

Judge Robert W Lehrburger
Hold on.

0:22:43.120 --> 0:22:45.780

Robert Amenn
It's statements about did I delete a file for devices?

0:22:46.570 --> 0:22:51.320

Judge Robert W Lehrburger
All in all, this does, by the way, as written and you tell me if I'm wrong, miss.

0:22:51.330 --> 0:22:55.620

Judge Robert W Lehrburger
Dined is it's just base cap gets to come back to court and make an application.

0:22:56.190 --> 0:22:56.770

Judge Robert W Lehrburger
Is that right?

0:22:56.870 --> 0:22:57.460

Stein, Wendy R.
Correct.

0:22:57.730 --> 0:22:58.350

Stein, Wendy R.
Yes, your honor.

0:22:57.880 --> 0:23:1.210

Judge Robert W Lehrburger
So it's not, it's not making a ruling on on anything.

0:23:2.80 --> 0:23:8.200

Judge Robert W Lehrburger
And if they come based on something that's frivolous or immaterial, then the courts not gonna be happy with that.

0:23:9.220 --> 0:23:16.110

Judge Robert W Lehrburger

So they're going to be, they're going to be circumspect in what they would do.

0:23:16.280 --> 0:23:26.20

Judge Robert W Lehrburger

So now that I've gone through that, I am preserving the language as written by the plaintiff here, because I find that it is not posing the.

0:23:28.200 --> 0:23:36.70

Judge Robert W Lehrburger

Uh, the the risk or threat that plaintiff, understandably has.

0:23:36.560 --> 0:23:37.310

Judge Robert W Lehrburger

Alright then.

0:23:37.320 --> 0:23:42.840

Judge Robert W Lehrburger

See the defendant reserves the right to request the quarter mutually agreed upon third party to certify.

0:23:45.470 --> 0:23:50.420

Judge Robert W Lehrburger

The whole base, cap information, blah blah blah would cause material harm to base gap.

0:23:50.710 --> 0:23:58.950

Judge Robert W Lehrburger

No, cause that the problem with that is then that's that's sort of what's indisputable in the end will be what is a trade secret, what's confidential?

0:23:59.620 --> 0:24:9.710

Judge Robert W Lehrburger

UM, so we can't have the protocol governed by a term such as material, because then everything becomes potentially subjective.

0:24:9.800 --> 0:24:11.490

Judge Robert W Lehrburger

So I'm not going to include that provision.

0:24:13.680 --> 0:24:15.820

Judge Robert W Lehrburger

OK, search terms.

0:24:17.460 --> 0:24:17.840

Judge Robert W Lehrburger

So.

0:24:20.100 --> 0:24:21.440

Judge Robert W Lehrburger
There was a.

0:24:23.240 --> 0:24:28.630

Judge Robert W Lehrburger
Portion you struck out in Mr Amend concerning August 14th 2019 to the present.

0:24:28.700 --> 0:24:30.570

Judge Robert W Lehrburger
Why did you strike out that last?

0:24:30.980 --> 0:24:33.900

Judge Robert W Lehrburger
That sentence the search will be conducted level blah.

0:24:36.800 --> 0:24:38.570

Robert Amenn
I'm which set.

0:24:38.580 --> 0:24:39.700

Robert Amenn
You're looking at the search terms.

0:24:39.400 --> 0:24:43.20

Judge Robert W Lehrburger
I'm looking at 4 Section 4 in the second paragraph.

0:24:45.570 --> 0:24:45.910

Robert Amenn
OK.

0:24:48.70 --> 0:24:48.560

Robert Amenn
Why did I?

0:24:47.820 --> 0:24:49.300

Judge Robert W Lehrburger
You struck the second sentence.

0:24:51.580 --> 0:24:53.250

Robert Amenn
Access a.

0:24:53.440 --> 0:24:57.810

Robert Amenn
The search will be conducted for all activity documents like the whole sentence.

0:24:57.960 --> 0:25:0.530

Robert Amenn

Sure, here's the thing.

0:25:1.0 --> 0:25:2.150

Robert Amenn

I would like this.

0:25:2.160 --> 0:25:6.30

Robert Amenn

This basically is introducing what a search terms will be applied to.

0:25:6.380 --> 0:25:26.680

Robert Amenn

There's two sections that cover what search terms are applied to this section and section 55A or five, Section 5, and what I'd like to be able to do is we're gonna discuss what gets included in Section 5, and if we exclude something, if I am, I'm I'm successful and something is excluded.

0:25:26.790 --> 0:25:36.100

Robert Amenn

I don't want this line to reintroduce it, so my recommendation was to say that they apply to, umm my.

0:25:36.110 --> 0:25:51.430

Robert Amenn

My recommendation is these search terms shall be run against steps listed in the forensics process in Section 5, so we'll cover everything that they're listing in their sentence, but it will make it as a reference and therefore the controlling, controlling ruling.

0:25:51.470 --> 0:25:56.330

Robert Amenn

The controlling searches will be controlled by Section 5 instead of two different sections.

0:25:57.270 --> 0:25:58.20

Robert Amenn

Does that make sense?

0:25:57.110 --> 0:25:59.400

Judge Robert W Lehrburger

OK, miss, I I understand.

0:25:59.410 --> 0:26:0.200

Judge Robert W Lehrburger

I understand.

0:26:0.470 --> 0:26:7.440

Judge Robert W Lehrburger

I think what you're saying, I I actually had thought there was a different concern here and I thought that was about the date range.

0:26:8.90 --> 0:26:9.570

Judge Robert W Lehrburger

Do you have any issue with the date range?

0:26:12.550 --> 0:26:13.390

Robert Amenn

No, no, no, no.

0:26:12.630 --> 0:26:15.90

Judge Robert W Lehrburger

Not saying there should be and just wondering.

0:26:17.430 --> 0:26:17.670

Judge Robert W Lehrburger

OK.

0:26:13.720 --> 0:26:18.50

Robert Amenn

That's I'm no, no, not, not necessarily.

0:26:18.60 --> 0:26:21.720

Robert Amenn

I mean like, it's pretty expensive, but it's fun.

0:26:20.850 --> 0:26:22.700

Judge Robert W Lehrburger

OK, but that's not why you crossed out.

0:26:22.710 --> 0:26:24.400

Judge Robert W Lehrburger

But that's not why you crossed out the sense.

0:26:23.380 --> 0:26:24.400

Robert Amenn

No, but that's correct.

0:26:24.410 --> 0:26:24.810

Robert Amenn

That's correct.

0:26:24.730 --> 0:26:25.160

Judge Robert W Lehrburger

OK.

0:26:25.230 --> 0:26:27.320

Judge Robert W Lehrburger

So, Miss Stein, what's your thought on this?

0:26:27.880 --> 0:26:28.450

Stein, Wendy R.

Yeah.

0:26:31.390 --> 0:26:32.290

Judge Robert W Lehrburger

Your your key.

0:26:28.460 --> 0:26:32.500

Stein, Wendy R.

That we we would like the date range because that's when he began working for baseball.

0:26:32.300 --> 0:26:33.370

Judge Robert W Lehrburger

We're keeping the date range.

0:26:33.380 --> 0:26:33.870

Judge Robert W Lehrburger

That's not.

0:26:34.660 --> 0:26:35.60

Stein, Wendy R.

Sir.

0:26:34.0 --> 0:26:35.390

Judge Robert W Lehrburger

That's not why he crossed it out.

0:26:37.40 --> 0:26:37.320

Stein, Wendy R.

OK.

0:26:38.830 --> 0:26:44.560

Stein, Wendy R.

Umm so I I mean I think it I think it's a if your honor up to your honor.

0:26:44.290 --> 0:26:46.750

Judge Robert W Lehrburger

Is there any reason it can't be moved to Section 5?

0:26:48.320 --> 0:26:49.50

Stein, Wendy R.

Oh, is there any?

0:26:49.500 --> 0:26:52.60

Stein, Wendy R.

The whole clause can't be moved to Section 5 now I'm fine with that.

0:26:52.620 --> 0:26:53.20

Judge Robert W Lehrburger
OK.

0:26:53.70 --> 0:26:54.240

Judge Robert W Lehrburger
So we'll do that for Mr.

0:26:54.250 --> 0:26:59.100

Judge Robert W Lehrburger
Allen, OK, now moving on to five forensic process.

0:27:0.60 --> 0:27:8.660

Judge Robert W Lehrburger
Uh, you in in five a you added non deleted files active, non deleted.

0:27:9.510 --> 0:27:11.110

Judge Robert W Lehrburger
Uh, why did you add that?

0:27:14.20 --> 0:27:22.420

Robert Amenn
Umm, because I wanted to to clearly differentiate their what active files were and files that were not deleted.

0:27:25.280 --> 0:27:26.250

Judge Robert W Lehrburger
OK, OK.

0:27:26.260 --> 0:27:26.630

Judge Robert W Lehrburger
It didn't.

0:27:22.430 --> 0:27:26.740

Robert Amenn
So I wanted to make that click completely clear and and I think.

0:27:26.640 --> 0:27:30.500

Judge Robert W Lehrburger
In the next, the next paragraph does refer to deleted files and it's done.

0:27:30.510 --> 0:27:34.620

Judge Robert W Lehrburger
Is there any reason not to include the little parenthetical in a?

0:27:35.230 --> 0:27:37.600

Stein, Wendy R.
No, I'm not agree to that in 62-1.

0:27:37.620 --> 0:27:38.260

Robert Amenn

Yeah, yeah.

0:27:37.750 --> 0:27:38.500

Stein, Wendy R.

So we agree.

0:27:37.900 --> 0:27:38.770

Judge Robert W Lehrburger

OK, great.

0:27:38.780 --> 0:27:40.310

Judge Robert W Lehrburger

So the parties are in agreement on that.

0:27:40.320 --> 0:27:40.830

Judge Robert W Lehrburger

Great.

0:27:40.920 --> 0:27:44.630

Judge Robert W Lehrburger

What about the the second sentence that Mister Rahman proposed?

0:27:44.640 --> 0:27:48.910

Judge Robert W Lehrburger

Deleted files will be searched in the manner outlined for unallocated space.

0:27:48.960 --> 0:27:52.110

Judge Robert W Lehrburger

Since deleted files are by definition allocated space.

0:27:53.900 --> 0:27:55.560

Robert Amenn

I think we have an agreement on that as well.

0:28:3.910 --> 0:28:6.140

Judge Robert W Lehrburger

Putting put in the new protocol.

0:28:6.150 --> 0:28:6.760

Judge Robert W Lehrburger

OK, good.

0:27:55.570 --> 0:28:6.790

Robert Amenn

Like if if you wanna the languages Umm, 5B they they changed language in 5B and I'm OK with it, not the language that you have but in their new portal, yeah.

0:28:6.770 --> 0:28:7.900

Judge Robert W Lehrburger
You have agreement on that.

0:28:8.510 --> 0:28:9.860

Judge Robert W Lehrburger
Excellent. Alright.

0:28:9.380 --> 0:28:11.130

Stein, Wendy R.
In 62-1.

0:28:11.200 --> 0:28:12.570

Stein, Wendy R.
Yeah, just for the record. OK.

0:28:11.460 --> 0:28:12.870

Judge Robert W Lehrburger
Yeah, I understood.

0:28:12.650 --> 0:28:13.440

Stein, Wendy R.
Yes. OK.

0:28:13.620 --> 0:28:15.900

Judge Robert W Lehrburger
And then in 5C.

0:28:16.490 --> 0:28:24.840

Judge Robert W Lehrburger
Uh, searching for the agreed upon search terms in communication, defined email, etcetera, etcetera.

0:28:24.850 --> 0:28:27.60

Judge Robert W Lehrburger
Have you reached agreement on this subparagraph?

0:28:28.770 --> 0:28:29.90

Robert Amenn
No.

0:28:28.930 --> 0:28:29.710

Stein, Wendy R.
No, your honor.

0:28:30.540 --> 0:28:31.870

Judge Robert W Lehrburger
OK, where's the disagreement?

0:28:33.230 --> 0:28:44.610

Robert Amenn

There's two points of disagreement, and I'll raise one the the the the order does not on from my perspective on a like require this.

0:28:46.160 --> 0:28:50.850

Robert Amenn

And if the order doesn't require it, I'd like it not to be included.

0:28:51.0 --> 0:28:57.100

Robert Amenn

Now, if the court sees otherwise, I have additional changes that I'd like to talk about.

0:28:57.220 --> 0:29:4.930

Robert Amenn

Secondary, but first it would be it would be helpful if the the court could could make that determination.

0:29:5.520 --> 0:29:9.750

Judge Robert W Lehrburger

Well, I I would like to Miss Stein to explain what this paragraph is doing and why it's necessary.

0:29:10.690 --> 0:29:11.180

Stein, Wendy R.

OK.

0:29:11.190 --> 0:29:11.990

Stein, Wendy R.

Thank you, runner.

0:29:12.0 --> 0:29:18.740

Stein, Wendy R.

So this paragraph is necessary because it's looking at emails and also messaging teams.

0:29:19.500 --> 0:29:20.940

Stein, Wendy R.

Outlook chats.

0:29:20.950 --> 0:29:23.790

Stein, Wendy R.

He's the defendant is trying to strike out chat.

0:29:24.450 --> 0:29:35.680

Stein, Wendy R.

But we're aware that he uses some chats and may have transferred our information in a chat, and so chat is there so that we can find our information wherever it resides.

0:29:35.690 --> 0:29:37.750

Stein, Wendy R.

That's always been our goal and it still remains our goal.

0:29:38.20 --> 0:29:46.150

Judge Robert W Lehrburger

OK, so so you you're the purpose of this paragraph is to make clear that communication is understood expansively.

0:29:46.450 --> 0:29:54.230

Judge Robert W Lehrburger

And will include any platform or application through which a communication can be made.

0:29:54.240 --> 0:29:55.50

Judge Robert W Lehrburger

Is that a fair statement?

0:29:55.760 --> 0:29:56.770

Stein, Wendy R.

Yes, your honor.

0:29:56.780 --> 0:29:57.900

Stein, Wendy R.

Much better stated than I.

0:29:57.960 --> 0:29:58.770

Stein, Wendy R.

Thank you. Yes.

0:29:58.870 --> 0:29:59.320

Judge Robert W Lehrburger

OK.

0:29:58.700 --> 0:30:0.110

Robert Amenn

You, you, you, you, you, you were on it.

0:30:0.120 --> 0:30:0.530

Robert Amenn

That is not.

0:29:59.870 --> 0:30:0.940

Judge Robert W Lehrburger

And Mr Rahman, yes.

0:30:0.950 --> 0:30:1.780

Judge Robert W Lehrburger

So what's your concern?

0:30:2.330 --> 0:30:4.970

Robert Amenn

That's not what we agreed to. This language.

0:30:4.980 --> 0:30:9.880

Robert Amenn

Email messaging, including but not limited to, teams discord and Outlook was proposed by me.

0:30:10.830 --> 0:30:24.40

Robert Amenn

The chat part I I struck it out not to hide chat, but that because teams and discord and outlook teams and discord are chats and we're we're OK for messaging, messaging and chats are the same thing.

0:30:24.350 --> 0:30:27.940

Robert Amenn

So I struck it out because it was the same and so.

0:30:27.550 --> 0:30:29.620

Judge Robert W Lehrburger

So in other words, it's duplicative in your view.

0:30:30.150 --> 0:30:30.420

Robert Amenn

Yeah.

0:30:30.430 --> 0:30:30.820

Robert Amenn

Yeah.

0:30:30.890 --> 0:30:32.670

Robert Amenn

And we define this to be.

0:30:31.850 --> 0:30:33.360

Judge Robert W Lehrburger

But but what's there's is there.

0:30:33.370 --> 0:30:34.130

Judge Robert W Lehrburger

What's the harm in that?

0:30:35.450 --> 0:30:35.750

Robert Amenn

Well.

0:30:37.790 --> 0:30:42.80

Robert Amenn

Any language that you put in there that's open for interpretation chat is one of them.

0:30:42.590 --> 0:30:48.730

Robert Amenn

They I don't know what the defendant, the plaintiff, can do to like what is the definition of chat?

0:30:48.740 --> 0:30:50.230

Robert Amenn

Chat is very broad.

0:30:49.870 --> 0:30:50.300

Judge Robert W Lehrburger
OK.

0:30:50.580 --> 0:30:51.120

Judge Robert W Lehrburger
OK.

0:30:51.280 --> 0:30:54.570

Judge Robert W Lehrburger
What you should do is you can include chat but say chat applications.

0:30:55.860 --> 0:31:9.160

Robert Amenn

I'm OK with that and the so but but this clause is specifically to limit the communication to email and messaging systems only, and that is what we negotiated together.

0:31:9.280 --> 0:31:10.210

Judge Robert W Lehrburger
As opposed to what?

0:31:11.430 --> 0:31:17.970

Robert Amenn

As as opposed to a broad communication tool, communication is a very generic word.

0:31:17.50 --> 0:31:21.590

Judge Robert W Lehrburger
Give me an E give me an example of a communication tool that you think would should not be included.

0:31:29.750 --> 0:31:31.540

Robert Amenn

I'm John.

0:31:35.210 --> 0:31:36.470

Judge Robert W Lehrburger
OK, alright.

0:31:31.630 --> 0:31:38.370

Robert Amenn

Can't think of 1 off the top my head because I I'm only using these communication tools so so like I I don't know like like like like.

0:31:42.20 --> 0:31:42.540

Stein, Wendy R.
FTP.

0:31:40.390 --> 0:31:46.150

Robert Amenn

It like if you like like FTP, would it be communication tool? Yeah.

0:31:47.570 --> 0:31:47.780

Judge Robert W Lehrburger
OK.

0:31:47.790 --> 0:31:49.140

Judge Robert W Lehrburger
And why shouldn't that be included?

0:31:49.960 --> 0:31:51.150

Robert Amenn
Because they didn't ask for it.

0:31:53.680 --> 0:31:54.310

Judge Robert W Lehrburger
Yeah.

0:31:54.660 --> 0:31:55.580

Judge Robert W Lehrburger
Yeah, look.

0:31:51.520 --> 0:31:57.110

Robert Amenn
I asked them specifically to define what they wanted to look at and that we came to the agreement that they defined this.

0:31:57.570 --> 0:31:57.870

Judge Robert W Lehrburger
OK.

0:31:57.880 --> 0:32:0.800

Judge Robert W Lehrburger
And I'm ordering that it be included that any communication.

0:32:1.70 --> 0:32:10.930

Judge Robert W Lehrburger
So I understand, you know you you don't have to exceed to it and agree to it and say you consent, but I'm going to order that be allowed and include it so that it's comprehensive.

0:32:10.410 --> 0:32:12.610

Robert Amenn
Mayor, they ask a clarifying question.

0:32:12.860 --> 0:32:13.90

Judge Robert W Lehrburger
Sure.

0:32:13.740 --> 0:32:20.460

Robert Amenn

If we came to an agreement and we both agreed that it would be limited to this, why would you expand the order to our agreement?

0:32:20.790 --> 0:32:24.920

Judge Robert W Lehrburger

Well, one thing is Miss Stein is disagreeing that you agreed about that, so.

0:32:24.800 --> 0:32:25.270

Stein, Wendy R.

Correct.

0:32:25.280 --> 0:32:26.670

Stein, Wendy R.

We had the ETC.

0:32:29.450 --> 0:32:29.960

Judge Robert W Lehrburger

Exactly.

0:32:30.760 --> 0:32:30.830

Robert Amenn

The.

0:32:26.680 --> 0:32:33.750

Stein, Wendy R.

For exactly that purpose, we had the etcetera as a casual because because we don't know and we won't know what's on his computer until we see it.

0:32:33.830 --> 0:32:34.140

Stein, Wendy R.

Thank you.

0:32:34.60 --> 0:32:34.310

Judge Robert W Lehrburger

Right.

0:32:33.640 --> 0:32:37.620

Robert Amenn

And it's the Exeter in the original is, is the etcetera in the document that you.

0:32:37.570 --> 0:32:40.180

Judge Robert W Lehrburger

Whether it is or isn't, it should be.

0:32:41.670 --> 0:32:41.910

Robert Amenn

OK.

0:32:40.270 --> 0:32:44.60

Judge Robert W Lehrburger

The point is that any communication tool is fair game.

0:32:45.190 --> 0:32:45.620

Judge Robert W Lehrburger

OK.

0:32:46.270 --> 0:32:59.950

Judge Robert W Lehrburger

Alright then there is a portion you added that says the search will be limited to using only the agreed upon search terms, and it's limited to linked files et cetera, et cetera.

0:33:1.340 --> 0:33:2.120

Robert Amenn

That's different, right?

0:33:2.130 --> 0:33:3.150

Robert Amenn

It's a different section, right?

0:33:1.160 --> 0:33:3.320

Judge Robert W Lehrburger

And let me yes.

0:33:3.690 --> 0:33:3.930

Stein, Wendy R.

OK.

0:33:3.240 --> 0:33:4.110

Robert Amenn

We're on PC though.

0:33:5.50 --> 0:33:6.290

Judge Robert W Lehrburger

Was there anything else in see?

0:33:6.860 --> 0:33:12.320

Robert Amenn

Yeah, I I asked that all emails that are recovered should follow the process outlined in 6E.

0:33:12.20 --> 0:33:13.720

Judge Robert W Lehrburger

Ah, OK, Miss Stein.

0:33:20.620 --> 0:33:20.820

Robert Amenn

But.

0:33:16.330 --> 0:33:25.730

Stein, Wendy R.

Umm, so the process in 6E, but I don't think we have an agreement on that in terms of the defendant getting an opportunity first to review and then our getting an opportunity.

0:33:25.530 --> 0:33:25.730

Robert Amenn

What?

0:33:26.440 --> 0:33:26.930

Judge Robert W Lehrburger

Hold on.

0:33:26.940 --> 0:33:28.40

Judge Robert W Lehrburger

Hold, hold, hold on.

0:33:30.240 --> 0:33:32.430

Judge Robert W Lehrburger

It says process outlined in six East.

0:33:34.930 --> 0:33:35.930

Stein, Wendy R.

No, I am not.

0:33:36.200 --> 0:33:37.380

Stein, Wendy R.

I'm fine with it, yes.

0:33:32.440 --> 0:33:38.380

Judge Robert W Lehrburger

Are you disagreeing with the process in six East or are you OK so then leave this.

0:33:38.430 --> 0:33:44.90

Judge Robert W Lehrburger

So we'll include this clause here and then discuss 60, OK, what?

0:33:43.460 --> 0:33:49.490

Robert Amenn

So then I'd like the the Court to rule on why the Why does the order from the?

0:33:49.600 --> 0:33:53.340

Robert Amenn

Why does the order from the judge include searching emails?

0:33:53.860 --> 0:34:21.730

Robert Amenn

Because they they specifically the in the testimony of Doctor Eastham, he specifically calls out that they're looking only like they they they went to the court and they outlined what they were looking for

and they were looking for deleted files and then the the judge in closing statements ordered us to work together and she references that she's comfortable with the process that Dr Easton outlined this is not in the process that Dr Easton outlined in his testimony.

0:34:22.210 --> 0:34:24.650

Judge Robert W Lehrburger

Are you saying the email shouldn't be included in the search?

0:34:25.320 --> 0:34:28.920

Robert Amenn

Based on their testimony in the court, they did not ask for it.

0:34:28.200 --> 0:34:39.680

Judge Robert W Lehrburger

OK, that's not the purpose of this is to search for information that has been transferred, if any, or downloaded or communicated to others.

0:34:39.690 --> 0:34:45.620

Judge Robert W Lehrburger

Email is obviously a major application for that and it is to be included.

0:34:46.870 --> 0:34:59.690

Judge Robert W Lehrburger

Alright, let's go to the next part, which is the addition of the search will be limited to using only the agreed upon search terms et cetera et cetera.

0:35:0.450 --> 0:35:1.400

Judge Robert W Lehrburger

Uh, miss.

0:35:1.410 --> 0:35:1.660

Judge Robert W Lehrburger

Stein.

0:35:1.670 --> 0:35:2.930

Judge Robert W Lehrburger

Is that something that's been resolved?

0:35:3.710 --> 0:35:4.940

Stein, Wendy R.

It has not, your honor.

0:35:5.310 --> 0:35:5.450

Judge Robert W Lehrburger

But.

0:35:5.530 --> 0:35:6.280

Stein, Wendy R.

We cannot.

0:35:6.290 --> 0:35:15.680

Stein, Wendy R.

We cannot agree to the last that added sentence because he's trying to limit the defendant, is trying to limit the scope of that section to.

0:35:17.70 --> 0:35:21.600

Stein, Wendy R.

Information stored by OneDrive or similar external storage.

0:35:21.810 --> 0:35:23.940

Stein, Wendy R.

It's the same issue that we had in 5C.

0:35:23.950 --> 0:35:31.810

Stein, Wendy R.

We need to be broad because we don't know the means by which he transferred information, and so we can't agree to that second sentence.

0:35:32.580 --> 0:35:34.280

Judge Robert W Lehrburger

And you're just looking for here.

0:35:34.290 --> 0:35:37.510

Judge Robert W Lehrburger

This is just looking for evidence that it was in fact transferred, right?

0:35:39.940 --> 0:35:40.470

Stein, Wendy R.

Yes, your honor.

0:35:41.40 --> 0:35:46.730

Judge Robert W Lehrburger

OK, so Mr Aman, help me understand why you think that added sentence should be included.

0:35:47.520 --> 0:35:50.370

Robert Amenn

Well, there's two sentences that I requested to be included.

0:35:50.380 --> 0:35:51.540

Robert Amenn

Which one are we referring to?

0:35:53.770 --> 0:35:55.920

Judge Robert W Lehrburger

I only see one they see.

0:35:51.550 --> 0:36:0.140

Robert Amenn

Forgive me for not understanding there is a I added two I I requested two sentences search terms will be limited to using only the agreed upon.

0:36:0.350 --> 0:36:12.710

Robert Amenn

The search will be limited to using only agreed upon search terms is 1 sentence and I'm referring to the document I sent this morning and the search will be limited to linked files, Windows Registry, hive and any other information stored on the laptop.

0:36:13.440 --> 0:36:13.750

Judge Robert W Lehrburger

Yeah.

0:36:13.480 --> 0:36:14.510

Robert Amenn

Umm yeah?

0:36:13.760 --> 0:36:16.850

Judge Robert W Lehrburger

No, that, that's that's it's one sentence in the document I have.

0:36:16.860 --> 0:36:17.290

Judge Robert W Lehrburger

So yes.

0:36:17.300 --> 0:36:17.630

Judge Robert W Lehrburger

Why?

0:36:17.410 --> 0:36:17.700

Robert Amenn

Ohh.

0:36:17.640 --> 0:36:18.290

Judge Robert W Lehrburger

Why?

0:36:18.360 --> 0:36:19.570

Judge Robert W Lehrburger

Why are those?

0:36:19.720 --> 0:36:21.330

Judge Robert W Lehrburger

Why are you seeking those terms?

0:36:21.960 --> 0:36:26.690

Robert Amenn

I I would specifically like to split it out into two sentences and I'll deal with each of them individually.

0:36:26.300 --> 0:36:28.280

Judge Robert W Lehrburger
OK, that's fine.

0:36:26.700 --> 0:36:29.590

Robert Amenn
If the court is OK with that, the first one is this.

0:36:29.840 --> 0:36:48.700

Robert Amenn
All of this, like we agreed upon a set of search terms and it was my understanding that all searches will be used with those search terms that there's not a a random looking at my hard drive that the hard drive will be specific to a set of search terms.

0:36:48.990 --> 0:36:56.10

Robert Amenn
So if there this is this, this information is on my hard drive, it should be limited to the search terms that we agreed upon.

0:36:55.730 --> 0:36:56.920

Judge Robert W Lehrburger
OK, can can I stop?

0:36:56.930 --> 0:36:58.40

Judge Robert W Lehrburger
Can I stop you for a minute?

0:36:58.410 --> 0:36:59.120

Judge Robert W Lehrburger
The beginning.

0:36:59.130 --> 0:37:5.210

Judge Robert W Lehrburger
First sentence says searching for evidence that files with the specified terms and this time is that referred to the search terms.

0:37:5.700 --> 0:37:6.960

Stein, Wendy R.
Exactly right, your honor, yes.

0:37:6.970 --> 0:37:7.280

Judge Robert W Lehrburger
OK.

0:37:7.290 --> 0:37:8.840

Judge Robert W Lehrburger
So that just needs to be clarified.

0:37:8.850 --> 0:37:11.160

Judge Robert W Lehrburger

And why don't you just say the specified terms?

0:37:11.170 --> 0:37:13.100

Judge Robert W Lehrburger

What you say the specified search terms?

0:37:11.800 --> 0:37:14.380

Stein, Wendy R.

Search terms, OK.

0:37:13.450 --> 0:37:16.10

Judge Robert W Lehrburger

Alright, Miss Roman, what's the concern with the second part?

0:37:20.410 --> 0:37:20.530

Judge Robert W Lehrburger

Yes.

0:37:16.730 --> 0:37:34.940

Robert Amenn

Can I have a clarifying question here because I wanna probe with an example if if they find that they they somehow if they determine that base CAP data is enough it I should say this I want to make sure I'm asking it right.

0:37:36.780 --> 0:37:43.30

Robert Amenn

Can they search event log for terms that are not in the search term list?

0:37:43.380 --> 0:37:46.350

Robert Amenn

So event log is basically all applicable record.

0:37:46.360 --> 0:37:47.970

Robert Amenn

A lot of the activity on the computer.

0:37:48.160 --> 0:37:55.610

Robert Amenn

So are they gonna search for the word like moved, or are they gonna search for the term moved?

0:37:55.820 --> 0:38:3.380

Robert Amenn

Like, are they gonna search for the specific search term or are they gonna just be brought in, able to search for the word move which is not in our search team list, can they?

0:38:3.120 --> 0:38:4.190

Judge Robert W Lehrburger
I think uh.

0:38:4.200 --> 0:38:5.40

Judge Robert W Lehrburger
Can you hold on?

0:38:5.140 --> 0:38:9.420

Judge Robert W Lehrburger
Let me this time I am I correct that it's only the search terms that you'll be using?

0:38:10.180 --> 0:38:10.870

Stein, Wendy R.
Correct, your honor.

0:38:12.630 --> 0:38:12.780

Judge Robert W Lehrburger
Then.

0:38:18.520 --> 0:38:18.860

Judge Robert W Lehrburger
Correct.

0:38:11.680 --> 0:38:19.730

Robert Amenn
OK, so move cannot be used or names of programs that are not in the search term list can't be used to search the event, right.

0:38:19.780 --> 0:38:21.0

Robert Amenn
OK, then I'm fine with it.

0:38:20.180 --> 0:38:22.640

Stein, Wendy R.
Well, I I think we should.

0:38:22.650 --> 0:38:24.910

Stein, Wendy R.
I just would Tom, is that correct? Yeah.

0:38:23.680 --> 0:38:34.530

Judge Robert W Lehrburger
Just to be just to be clear, the the the way this is gonna be worded is it's gonna say with the specified search terms and then we will not have the added sentence.

0:38:35.160 --> 0:38:35.330

Stein, Wendy R.
OK.

0:38:38.440 --> 0:38:38.700

Robert Amenn

So.

0:38:35.80 --> 0:38:40.30

Judge Robert W Lehrburger

Let's go on to the next sentence that you have limited to linked files et cetera.

0:38:40.880 --> 0:38:41.160

Robert Amenn

So.

0:38:42.870 --> 0:38:48.540

Robert Amenn

I'm my concern is that there is, I don't know like how should I say this.

0:38:49.990 --> 0:38:54.800

Robert Amenn

Confidential information will more than likely only be in the unallocated space.

0:38:55.470 --> 0:38:59.100

Robert Amenn

Returning college information will be in the only in the unallocated space.

0:39:0.190 --> 0:39:7.410

Robert Amenn

If this the way this clause is written, it gives free rein for anyone to search anywhere in the computer.

0:39:8.190 --> 0:39:8.470

Robert Amenn

Umm.

0:39:9.50 --> 0:39:12.160

Robert Amenn

And I'm concerned that they will.

0:39:15.950 --> 0:39:16.110

Tom Plunkett

And.

0:39:12.170 --> 0:39:20.600

Robert Amenn

They will discover client attorney privilege information and access and and third party confidential information.

0:39:20.200 --> 0:39:27.90

Judge Robert W Lehrburger

But but so help so help me understand then is your is your wording here meant to exclude the unallocated space or what?

0:39:27.100 --> 0:39:28.130

Judge Robert W Lehrburger

I don't understand what it's doing.

0:39:27.910 --> 0:39:35.470

Robert Amenn

The the wording is meant to exclude meant to exclude searching in spaces that that the Archer Hall.

0:39:37.370 --> 0:39:39.760

Robert Amenn

Didn't request because I can't.

0:39:39.70 --> 0:39:39.760

Judge Robert W Lehrburger

So aren't you?

0:39:39.770 --> 0:39:39.950

Robert Amenn

I can't.

0:39:39.770 --> 0:39:40.820

Judge Robert W Lehrburger

Look, look, look.

0:39:40.910 --> 0:39:57.30

Judge Robert W Lehrburger

Archer Hall is the independent neutral forensic uh examiner who is going to essentially search and sift the files if somehow confidential information is exposed to them.

0:39:57.40 --> 0:40:1.820

Judge Robert W Lehrburger

Because it's a file that turns up there, they're not gonna provide that.

0:40:3.70 --> 0:40:9.820

Judge Robert W Lehrburger

And it's gonna be off limits now if I guess if it involves base cap in some way, then the parties can fight about it, but the.

0:40:12.270 --> 0:40:12.440

Robert Amenn

That.

0:40:12.820 --> 0:40:23.680

Judge Robert W Lehrburger

There's that they have a right to be searching anywhere on the computer that this may reside, so we're not gonna limit it to just part of the computer.

0:40:29.900 --> 0:40:30.60

Judge Robert W Lehrburger
Yeah.

0:40:25.240 --> 0:40:30.820

Robert Amenn
So let let me sort of address your owner from my perspective.

0:40:30.830 --> 0:40:32.60

Robert Amenn
You made an inaccurate statement.

0:40:32.340 --> 0:40:33.230

Judge Robert W Lehrburger
OK, go ahead.

0:40:33.930 --> 0:40:41.40

Robert Amenn
So with respect to wave with the way, and I'm gonna talk about unallocated space, because they're gonna search on allocated space, right?

0:40:44.990 --> 0:40:45.110

Judge Robert W Lehrburger
Yeah.

0:40:47.140 --> 0:40:47.260

Judge Robert W Lehrburger
Yes.

0:40:41.710 --> 0:41:15.220

Robert Amenn
And with this tool they can search on on allocate space to determine this 5D when when a search term is hidden unallocated space, the they they will use a technique called file carving and the file carving has a sync, a decent probability of capturing data that is not based caps and because there's a section of the file that is based cap specific and they should have that data back.

0:41:15.230 --> 0:41:31.70

Robert Amenn
If that's the case, what they shouldn't have any data that is outside of that, but the way file carving will work is it is potential that third party data will be handed over to base cap because of the way file copying works.

0:41:31.640 --> 0:41:33.580

Robert Amenn
So when they do this.

0:41:33.20 --> 0:41:36.40

Judge Robert W Lehrburger
Let me let me just ask a question here of of Miss Stein.

0:41:39.690 --> 0:41:46.50

Judge Robert W Lehrburger

Address his concern, but I had assumed that such information maybe I'm wrong, would be sifted out and it would never make its way to you.

0:41:47.480 --> 0:41:47.730

Stein, Wendy R.

Yes.

0:41:47.740 --> 0:41:54.350

Stein, Wendy R.

So I think Tom Plunkett should address this, because he's going to be doing the search and he can speak more technically to the file carving.

0:41:54.360 --> 0:41:55.630

Stein, Wendy R.

I'm not able to address that.

0:41:56.270 --> 0:41:56.440

Judge Robert W Lehrburger

OK.

0:41:57.660 --> 0:41:58.840

Tom Plunkett

Alright, thank you.

0:41:58.850 --> 0:41:59.440

Tom Plunkett

And thank your honor.

0:41:59.930 --> 0:42:1.340

Tom Plunkett

Uh, so miss?

0:42:1.350 --> 0:42:7.140

Tom Plunkett

Robbins said about or searching of unallocated space is generally correct, correct.

0:42:9.460 --> 0:42:12.490

Tom Plunkett

When we find we, we search unallocated space.

0:42:12.500 --> 0:42:15.90

Tom Plunkett

It's think of it as just a big pile of stuff.

0:42:15.100 --> 0:42:17.990

Tom Plunkett

At this point we find a key term.

0:42:18.40 --> 0:42:20.130

Tom Plunkett

Let's say the key term is base cap.

0:42:20.880 --> 0:42:24.630

Tom Plunkett

That doesn't necessarily start a file or end of file.

0:42:24.680 --> 0:42:26.430

Tom Plunkett

It could be right in the middle of a file.

0:42:26.920 --> 0:42:33.750

Tom Plunkett

Therefore, we have to find the beginning of the file that contains that that key term.

0:42:34.160 --> 0:42:44.840

Tom Plunkett

It's gonna be somewhere before that term and we have to try to find the end of that file in order to export something out that's viewable by Mr Rahman and and Miss Stein.

0:42:46.780 --> 0:42:53.530

Tom Plunkett

His concern is that we may pull out uh data that is maybe after the end of a file.

0:42:56.280 --> 0:43:0.950

Tom Plunkett

That is doubly possible because we're looking at again big pile of stuff.

0:43:0.900 --> 0:43:1.270

Judge Robert W Lehrburger

Right.

0:43:1.280 --> 0:43:1.620

Judge Robert W Lehrburger

So OK.

0:43:1.560 --> 0:43:7.310

Tom Plunkett

What should what should happen is that this unallocated anything coming from an allocated space should be reviewed.

0:43:7.440 --> 0:43:12.510

Tom Plunkett

The content needs to be reviewed and verify that we are only pulling out the content.

0:43:13.270 --> 0:43:13.660

Judge Robert W Lehrburger

Great.

0:43:12.520 --> 0:43:14.430

Tom Plunkett

That's associated with that term.

0:43:14.160 --> 0:43:14.980

Judge Robert W Lehrburger

Who, who, who?

0:43:15.30 --> 0:43:16.210

Judge Robert W Lehrburger

Who would review that?

0:43:17.370 --> 0:43:21.360

Tom Plunkett

It's going to be a combination of us, so let's say.

0:43:21.40 --> 0:43:21.450

Judge Robert W Lehrburger

Is it?

0:43:21.460 --> 0:43:26.890

Judge Robert W Lehrburger

I just want to know is it reviewed by Defense counsel or no?

0:43:26.700 --> 0:43:27.190

Tom Plunkett

It will be.

0:43:27.340 --> 0:43:29.110

Tom Plunkett

It'll be reviewed by defense counsel.

0:43:29.180 --> 0:43:29.880

Tom Plunkett

This should be so.

0:43:30.730 --> 0:43:31.140

Stein, Wendy R.

I'm.

0:43:29.470 --> 0:43:34.30

Judge Robert W Lehrburger

OK, so they can say whether there's information that was overinclusive.

0:43:35.80 --> 0:43:36.40

Tom Plunkett

Yes, and.

0:43:35.510 --> 0:43:37.870

Stein, Wendy R.

I'm sorry, there is no defense council not understanding.

0:43:37.880 --> 0:43:39.10

Stein, Wendy R.

The defendant has not.

0:43:39.20 --> 0:43:40.480

Stein, Wendy R.

His lawyer has not appeared in the case.

0:43:40.490 --> 0:43:41.440

Stein, Wendy R.

So who do you need?

0:43:40.450 --> 0:43:41.760

Judge Robert W Lehrburger

I'm sorry, plaintiff count.

0:43:41.930 --> 0:43:42.480

Stein, Wendy R.

OK.

0:43:41.770 --> 0:43:43.120

Judge Robert W Lehrburger

I'm sorry, plaintiff counsel.

0:43:43.170 --> 0:43:44.20

Judge Robert W Lehrburger

Plaintiff counsel.

0:43:42.530 --> 0:43:44.60

Stein, Wendy R.

OK. OK.

0:43:44.30 --> 0:43:44.520

Judge Robert W Lehrburger

I'm sorry.

0:43:44.150 --> 0:43:44.900

Stein, Wendy R.

Thank you. Yes.

0:43:45.250 --> 0:43:53.570

Judge Robert W Lehrburger

So plaintiff council would see it only to verify that there there is an actually overinclusive information, right?

0:43:54.730 --> 0:43:58.520

Judge Robert W Lehrburger

And if there were, what is Plaintiffs council obligated to do?

0:44:2.150 --> 0:44:10.80

Tom Plunkett

There, there'll be obligated to work this information as either relevant or nonresponsive.

0:44:11.990 --> 0:44:15.600

Tom Plunkett

Or they could say that, yeah, this is part of another file, but part.

0:44:15.0 --> 0:44:16.110

Judge Robert W Lehrburger

Well, what, what? What?

0:44:16.120 --> 0:44:17.110

Judge Robert W Lehrburger

What if there?

0:44:17.160 --> 0:44:20.590

Judge Robert W Lehrburger

Is there anything in the protocol that addresses what happens in that instance?

0:44:20.600 --> 0:44:21.650

Judge Robert W Lehrburger

Miss Stein is saying yes.

0:44:21.660 --> 0:44:22.660

Judge Robert W Lehrburger

What is that, Miss Stein?

0:44:22.0 --> 0:44:22.770

Stein, Wendy R.

Yes, your honor.

0:44:23.20 --> 0:44:26.100

Stein, Wendy R.

So in in paragraph.

0:44:34.30 --> 0:44:36.130

Stein, Wendy R.

Sticks E little one.

0:44:37.810 --> 0:44:57.930

Stein, Wendy R.

Both sides would receive a list of files that we're responsive to the search terms and then defendant would have the first opportunity to review the list and identify files he believes are not related to base

cap and then he prepares a writing for us and says, you know, OK, these 10 files are not yours, they're not your clients and they're not base caps clients.

0:44:56.870 --> 0:45:0.650

Judge Robert W Lehrburger

But is he only going to see the file name or is he going to see the content of the file?

0:45:1.250 --> 0:45:1.600

Stein, Wendy R.

Yes.

0:45:1.610 --> 0:45:10.480

Stein, Wendy R.

So the way we have it set up is he's going to have something like relativity where he could access a file, but he can't have it.

0:45:10.750 --> 0:45:12.460

Stein, Wendy R.

You know he can't possess our files again.

0:45:13.20 --> 0:45:13.410

Judge Robert W Lehrburger

I'm not.

0:45:13.420 --> 0:45:14.760

Judge Robert W Lehrburger

I'm not asking about possessing.

0:45:14.770 --> 0:45:25.750

Judge Robert W Lehrburger

I'm asking will he be able to see the content of the file so that he has the opportunity to say look, there's information here that accidentally was overinclusive and is not actually part of this file.

0:45:26.440 --> 0:45:26.580

Stein, Wendy R.

Yes.

0:45:27.770 --> 0:45:28.200

Judge Robert W Lehrburger

OK.

0:45:28.910 --> 0:45:31.880

Judge Robert W Lehrburger

So, Mr Annan, you're going to have that opportunity to do that.

0:45:31.970 --> 0:45:33.320

Judge Robert W Lehrburger

This is protective.

0:45:33.430 --> 0:45:36.560

Judge Robert W Lehrburger

You're not gonna be waiving anything as a result of this protocol.

0:45:36.670 --> 0:45:42.120

Judge Robert W Lehrburger

You're not gonna be waving anything because this is gonna be by court order, not by agreement.

0:45:44.790 --> 0:45:47.110

Robert Amenn

So so may I may I have a clarifying point on this?

0:45:43.110 --> 0:45:47.830

Judge Robert W Lehrburger

So I find that that is sufficiently protective, yes, yes.

0:45:48.900 --> 0:45:59.110

Robert Amenn

If if that information is attorney client privilege and the Council plaintiffs sees that information, isn't that a violation of attorney client privilege?

0:46:1.670 --> 0:46:2.600

Judge Robert W Lehrburger

The.

0:45:59.200 --> 0:46:11.850

Robert Amenn

And it's not, it's not attorney client privilege with the current attorney on this case, but it's privilege for other other cases, not other cases, but other questions I've had of attorneys and I.

0:46:11.150 --> 0:46:26.40

Judge Robert W Lehrburger

Right, so, so so this is not unlike what happens with inadvertent production of privilege material in cases particularly where there are large document production say or electronic information.

0:46:26.520 --> 0:46:35.360

Judge Robert W Lehrburger

The parties will exchange documents and sometimes privileged communications end up getting produced just cuz they pack.

0:46:35.370 --> 0:46:38.930

Judge Robert W Lehrburger

They didn't get caught or they pass through or whatever it was.

0:46:39.320 --> 0:46:52.70

Judge Robert W Lehrburger

In that case, a party will who receives that will have the obligation to return it unless there's a basis to challenge the privilege, they still they still have to destroy it, but they could.

0:46:52.80 --> 0:46:54.470

Judge Robert W Lehrburger

They could still challenge the privilege.

0:46:54.740 --> 0:47:2.720

Judge Robert W Lehrburger

So is there a provision missed on in the protocol that provides for something like that?

0:47:4.120 --> 0:47:5.290

Stein, Wendy R.

Uh, not at this time.

0:47:5.300 --> 0:47:15.960

Stein, Wendy R.

I did wanna present section 7C because that's where it says that defendant could access the extracted data in a program such as relativity.

0:47:16.580 --> 0:47:26.310

Stein, Wendy R.

He could not screenshot it, but we'd be happy to add in this search terms a list of his attorneys and then those hits could be excluded.

0:47:26.920 --> 0:47:29.210

Stein, Wendy R.

But we don't want to see his privileged information.

0:47:29.220 --> 0:47:29.820

Stein, Wendy R.

Absolutely not.

0:47:27.310 --> 0:47:32.310

Judge Robert W Lehrburger

I right so, so that all sounds fine and good and should be done.

0:47:32.320 --> 0:47:43.820

Judge Robert W Lehrburger

But how about adding a provision that says any advertent production of attorney client information will not constitute a waiver? And.

0:47:43.750 --> 0:47:44.110

Stein, Wendy R.

OK.

0:47:45.660 --> 0:48:2.110

Judge Robert W Lehrburger

If either side uh has received what they perceive as attorney client communication, they are to immediately cease looking at it and notify the other party and take it from there.

0:48:5.270 --> 0:48:5.410

Judge Robert W Lehrburger
OK.

0:48:5.60 --> 0:48:7.590

Stein, Wendy R.
Yes, and that's required by the rules anyway.

0:48:7.600 --> 0:48:8.800

Stein, Wendy R.
Yeah, we can find a place for that.

0:48:9.370 --> 0:48:10.30

Judge Robert W Lehrburger
OK, great.

0:48:10.840 --> 0:48:12.160

Robert Amenn
There's one of the one.

0:48:10.450 --> 0:48:12.920

Tom Plunkett
But you're honor, my my ask something real quick.

0:48:13.10 --> 0:48:14.740

Tom Plunkett
If we're done with this with this section.

0:48:15.100 --> 0:48:15.650

Judge Robert W Lehrburger
We'll hold on.

0:48:15.410 --> 0:48:16.520

Robert Amenn
I do have one point on it.

0:48:15.660 --> 0:48:16.700

Judge Robert W Lehrburger
Mr Rahman had a comment.

0:48:16.850 --> 0:48:17.40

Tom Plunkett
Or.

0:48:17.770 --> 0:48:20.100

Robert Amenn
So what about client list?

0:48:20.410 --> 0:48:32.790

Robert Amenn

If the client if if if base cap and I'm not base cap sees my client list that's not required for them to exclude and can they can they call that call those clients?

0:48:33.180 --> 0:48:35.450

Judge Robert W Lehrburger

Well, let me ask Miss Stein, can you help with that?

0:48:36.500 --> 0:48:36.880

Stein, Wendy R.

Yes.

0:48:36.890 --> 0:48:48.790

Stein, Wendy R.

So, umm, the defendant is under a non compete and so in the in discovery we would learn who he's working for because we'd be entitled to that since our breach of contract claim extends to that.

0:48:49.50 --> 0:48:54.350

Stein, Wendy R.

And so, yes, in discovery, when you learn the identities of people, you're allowed to contact them.

0:48:54.360 --> 0:48:55.930

Stein, Wendy R.

If we wanted to serve a subpoena, we could.

0:48:57.180 --> 0:49:1.70

Judge Robert W Lehrburger

But what about a comprehensive client list?

0:49:1.80 --> 0:49:4.830

Judge Robert W Lehrburger

Let's say that includes clients who are not clients of base cap.

0:49:7.330 --> 0:49:14.930

Stein, Wendy R.

Well, I think what's happening here is there is one client of base cap who is also a client of someone that defendants working for.

0:49:20.10 --> 0:49:20.270

Judge Robert W Lehrburger

OK.

0:49:21.860 --> 0:49:22.0

Robert Amenn

And.

0:49:32.480 --> 0:49:32.750

Robert Amenn

It.

0:49:15.370 --> 0:49:37.550

Stein, Wendy R.

And so there is kind of a common client and but yes, I mean we we actually presented the defendant with different protective orders early on in the case so that we could have attorneys eyes only provisions he, he we never were able to finalize one but but yes we would be able to see that on an attorneys eyes only basis and in the case generally in discovery we could subpoena those parties.

0:49:38.220 --> 0:49:38.910

Judge Robert W Lehrburger

Right.

0:49:39.20 --> 0:49:41.770

Judge Robert W Lehrburger

OK, So what do you think of having?

0:49:42.160 --> 0:49:49.460

Judge Robert W Lehrburger

Well, the problem with the attorneys eyes only basis, it'd be hard to do two ways if he doesn't have counsel, but are you willing to commit to attorneys?

0:49:49.470 --> 0:49:51.220

Judge Robert W Lehrburger

Eyes only for client lists.

0:49:51.900 --> 0:49:52.520

Stein, Wendy R.

Absolutely yes.

0:49:52.890 --> 0:49:54.510

Judge Robert W Lehrburger

Alright, so that's what we'll do.

0:49:54.850 --> 0:50:7.330

Judge Robert W Lehrburger

We'll have a provision that says any client list of the defendant will be subject to attorneys eyes only, meaning only the Council can see it, not business folks.

0:50:7.740 --> 0:50:11.500

Robert Amenn

For now, what about IP that comes back?

0:50:11.510 --> 0:50:12.720

Robert Amenn

Can we make this statement?

0:50:12.730 --> 0:50:16.220

Robert Amenn

Attorneys eyes only to all the information that is discovered.

0:50:16.230 --> 0:50:20.230

Robert Amenn

That's incorrectly, that's not base caps material.

0:50:22.440 --> 0:50:23.810

Stein, Wendy R.

So I can address that, your Honor.

0:50:23.520 --> 0:50:24.100

Judge Robert W Lehrburger

Yeah, please.

0:50:24.40 --> 0:50:34.620

Stein, Wendy R.

And then OK, so part of what we think might have happened is he could defend and could have taken base cap information, let's say, a line of code and put it into someone else's code.

0:50:34.630 --> 0:50:40.650

Stein, Wendy R.

And so we'll need an expert witness who's able to see attorneys eyes only information to view that information.

0:50:39.530 --> 0:50:42.610

Judge Robert W Lehrburger

Sure, that that's that's commonly done.

0:50:40.900 --> 0:50:43.530

Stein, Wendy R.

And so we would, yes, yes.

0:50:43.540 --> 0:50:47.310

Stein, Wendy R.

And so we would agree to an attorney's only designation for that information.

0:50:47.320 --> 0:50:49.580

Stein, Wendy R.

But obviously our expert witness could see that information.

0:50:49.880 --> 0:50:50.250

Judge Robert W Lehrburger

Yeah.

0:50:50.290 --> 0:50:54.560

Judge Robert W Lehrburger

Expert witnesses are allowed under attorneys eyes only to to review.

0:50:55.410 --> 0:50:55.510

Stein, Wendy R.

Yes.

0:50:55.460 --> 0:50:55.700

Robert Amenn

OK.

0:50:56.190 --> 0:50:57.120

Judge Robert W Lehrburger

OK, good.

0:50:57.730 --> 0:51:3.710

Judge Robert W Lehrburger

Alright, so then we get to method of collection and is it still up to three days?

0:51:5.600 --> 0:51:6.30

Judge Robert W Lehrburger

OK.

0:51:6.80 --> 0:51:7.970

Judge Robert W Lehrburger

And the up two language is fine.

0:51:7.980 --> 0:51:9.20

Judge Robert W Lehrburger

I don't see a problem with that.

0:51:10.810 --> 0:51:11.520

Robert Amenn

Wait, wait.

0:51:11.940 --> 0:51:12.120

Judge Robert W Lehrburger

Yeah.

0:51:11.570 --> 0:51:12.660

Robert Amenn

Your, your, your.

0:51:15.340 --> 0:51:15.500

Judge Robert W Lehrburger

Yes.

0:51:18.830 --> 0:51:18.930

Judge Robert W Lehrburger

Yes.

0:51:9.720 --> 0:51:20.610

Tom Plunkett

But you'd rather, if I may, I I said one more comment on the on the previous sentences under section 55D where it said the source will be limited to linked files.

0:51:20.620 --> 0:51:21.920

Tom Plunkett

Registry hive. Umm.

0:51:22.890 --> 0:51:29.50

Tom Plunkett

In the sentence above that it it calls out certain tools, magnet Axiom, DT search or Excel.

0:51:30.690 --> 0:51:36.70

Tom Plunkett

I provided a list of common tools that we use to do our forensics work.

0:51:36.110 --> 0:51:36.990

Tom Plunkett

However, this is not.

0:51:38.920 --> 0:51:41.290

Tom Plunkett

Not an entire list of everything that we may use.

0:51:41.440 --> 0:51:46.960

Tom Plunkett

I just want to make sure that we are not limited to the use of these three tools here, for our, for our work.

0:51:47.670 --> 0:51:50.130

Judge Robert W Lehrburger

I see Mr Amit, do you have a problem with that?

0:51:50.740 --> 0:51:52.170

Robert Amenn

That's what we agreed upon.

0:51:55.840 --> 0:51:56.90

Judge Robert W Lehrburger

What?

0:51:55.930 --> 0:51:56.330

Stein, Wendy R.

I'm sorry.

0:51:52.260 --> 0:51:56.420

Robert Amenn

That client, plaintiff and I had to limit it to this set of tools. That's.

0:51:56.100 --> 0:51:57.770

Judge Robert W Lehrburger

What other tool hold on?

0:51:57.960 --> 0:51:58.840

Judge Robert W Lehrburger
Ohh go ahead and this time.

0:52:0.870 --> 0:52:1.280

Stein, Wendy R.
I'm sorry.

0:52:1.290 --> 0:52:3.480

Stein, Wendy R.
So in section 5D I just want to clarify.

0:52:3.490 --> 0:52:16.0

Stein, Wendy R.
So we're not having that second sentence, we're only having searching for evidence that files with the specified terms have been moved from the laptop to any cloud storage or external storage device using magnet Axion, DTT server or Excel.

0:52:17.810 --> 0:52:19.110

Stein, Wendy R.
Is that the sentence we're talking about now?

0:52:17.120 --> 0:52:19.670

Robert Amenn
Yes, that's yeah.

0:52:19.680 --> 0:52:20.70

Robert Amenn
Yeah.

0:52:20.130 --> 0:52:30.140

Robert Amenn
And and we specifically the plaintiff and I agreed, based on consultation with Doctor Hall, that this would be the list of tools that would be used.

0:52:32.620 --> 0:52:33.60

Judge Robert W Lehrburger
It's done.

0:52:32.410 --> 0:52:34.360

Stein, Wendy R.
I I guess I'll have to defer to Archer Hall.

0:52:34.370 --> 0:52:42.810

Stein, Wendy R.
I mean, if Archer Hall is saying that they need another tool, then I I mean the bottom line here is to get to the truth, not to make limitations so that we can't access our own information.

0:52:42.550 --> 0:52:42.860

Judge Robert W Lehrburger
Right.

0:52:42.870 --> 0:52:43.160

Judge Robert W Lehrburger
So.

0:52:43.170 --> 0:52:45.180

Judge Robert W Lehrburger
So Mr Plunkett, what tools would be used?

0:52:46.280 --> 0:52:51.490

Tom Plunkett
Ohh use my magnet axiom that you will provide us a certain amount of data.

0:52:51.600 --> 0:52:58.280

Tom Plunkett
We often will use other tools to verify what we find and say magnant use the tool called Encase or FTK.

0:52:58.290 --> 0:52:59.490

Tom Plunkett
Those are all forensics tools.

0:53:1.190 --> 0:53:1.370

Tom Plunkett
If.

0:53:0.620 --> 0:53:2.50

Judge Robert W Lehrburger
OK, this is what we're going to do.

0:53:2.60 --> 0:53:12.340

Judge Robert W Lehrburger
We're going to say and other tools as Archer determines is necessary to conduct their examination.

0:53:12.840 --> 0:53:13.240

Tom Plunkett
Thank you.

0:53:14.90 --> 0:53:14.740

Robert Amenn
You're on it.

0:53:14.750 --> 0:53:17.400

Robert Amenn
Can we have a definitive list?

0:53:17.410 --> 0:53:28.540

Robert Amenn

Because like for the case of when we talked about file carving, I need to understand what data of mine is gonna be invertedly put at risk.

0:53:28.650 --> 0:53:37.90

Robert Amenn

And because I understood file carving and I had conversations with Doctor Hall, I was able to protect my data from file carving.

0:53:37.220 --> 0:53:40.730

Judge Robert W Lehrburger

So, so so look this this is a court order.

0:53:41.120 --> 0:53:51.610

Judge Robert W Lehrburger

There are going to be, there are always situations where something might sneak through, but there are provisions that are going to say that has to be returned that has to be destroyed.

0:53:51.860 --> 0:54:3.30

Judge Robert W Lehrburger

So we're not and I find that the protections and the methodologies and the personnel of Archer are professional.

0:54:3.200 --> 0:54:11.450

Judge Robert W Lehrburger

Enable enough that they are going to hue as closely as possible to making sure you know information that shouldn't be produced is produced.

0:54:11.460 --> 0:54:21.180

Judge Robert W Lehrburger

But I'm not going to limit them in terms of a specific program if they come across something that requires another tool to be used.

0:54:22.520 --> 0:54:27.640

Judge Robert W Lehrburger

So that's that alright method of collection.

0:54:27.930 --> 0:54:29.400

Judge Robert W Lehrburger

We had the up to three days.

0:54:31.680 --> 0:54:36.810

Judge Robert W Lehrburger

Then we have that base CAP will pay for the camera monitoring.

0:54:36.820 --> 0:54:38.100

Judge Robert W Lehrburger

It miss done is that agreed to.

0:54:39.30 --> 0:54:39.440

Stein, Wendy R.

Sure.

0:54:39.450 --> 0:54:39.870

Stein, Wendy R.

Yes you are.

0:54:40.320 --> 0:54:40.810

Judge Robert W Lehrburger

OK.

0:54:41.820 --> 0:54:47.500

Judge Robert W Lehrburger

And then we get to the preservation paragraph, and there were a number of changes there.

0:54:47.510 --> 0:54:48.970

Judge Robert W Lehrburger

Or there are still disagreements there.

0:54:51.280 --> 0:54:56.550

Robert Amenn

Yes, there's, there's, there's disagreements, but clarification is really more important.

0:54:57.320 --> 0:54:57.560

Judge Robert W Lehrburger

OK.

0:54:58.770 --> 0:54:59.110

Robert Amenn

So.

0:54:59.30 --> 0:54:59.970

Judge Robert W Lehrburger

Umm yeah.

0:55:0.820 --> 0:55:14.360

Robert Amenn

In order to alleviate the plaintiffs concerns about me tampering with the hard drive, the the hard disk, umm, at the computer while it was in the possession?

0:55:14.370 --> 0:55:16.50

Robert Amenn

Like while it was in the room for three days.

0:55:16.790 --> 0:55:23.320

Robert Amenn

Umm, I agreed that I would sign an affidavit that would say that I wouldn't tamper with the key.

0:55:26.480 --> 0:55:26.790

Judge Robert W Lehrburger
Right.

0:55:23.670 --> 0:55:28.980

Robert Amenn

I wouldn't remotely log into the computer and tamper the computer while it was in the office for three days.

0:55:29.370 --> 0:55:31.670

Robert Amenn

I wouldn't remotely like.

0:55:36.230 --> 0:55:36.470

Judge Robert W Lehrburger
OK.

0:55:31.680 --> 0:55:44.720

Robert Amenn

I wouldn't touch Archer holes equipment and I would not fiddle with the room if if my if my statement certification under penalty of perjury is limited to that.

0:55:45.70 --> 0:55:48.520

Robert Amenn

I am totally on board with section AI.

0:55:48.530 --> 0:56:4.230

Robert Amenn

Don't understand like the the, the, the plaintiff in front of Archer Hall wanted me to expand the the the certification for for beyond that.

0:56:4.400 --> 0:56:19.410

Robert Amenn

And I think that was one of the reasons why I think Archer Hole potentially could be prejudice, because I had to deny repeatedly the request that the plaintiff wanted to expand my gracious offer to certify that I wouldn't mess with the computer while it was in.

0:56:17.940 --> 0:56:20.590

Judge Robert W Lehrburger
The well, let me let me make sure.

0:56:20.600 --> 0:56:22.390

Judge Robert W Lehrburger
Let's get to the actual issue.

0:56:22.400 --> 0:56:27.670

Judge Robert W Lehrburger

It appears you crossed out language that says nor interfered with any of the steps detailed in this protocol.

0:56:27.680 --> 0:56:29.40

Judge Robert W Lehrburger
Is that what you're concerned with?

0:56:29.620 --> 0:56:31.120

Robert Amenn
No, that's no longer in the in the.

0:56:31.40 --> 0:56:34.420

Judge Robert W Lehrburger
Ohh OK, so then what's where's the problem?

0:56:33.730 --> 0:56:35.720

Robert Amenn
I I think I think it's best to look for this one.

0:56:35.730 --> 0:56:42.700

Robert Amenn
It's best to look at at language that's in the latest latest protocol that Miss Diane is referenced to.

0:56:43.620 --> 0:56:43.910

Judge Robert W Lehrburger
Right.

0:56:43.580 --> 0:56:44.120

Stein, Wendy R.
It's easy.

0:56:43.920 --> 0:56:44.200

Judge Robert W Lehrburger
Well, I.

0:56:44.130 --> 0:56:45.340

Stein, Wendy R.
F62-1.

0:56:54.120 --> 0:57:4.990

Stein, Wendy R.
I think the issue umm from my perspective from plain's perspective is that we believe he has altered the laptop since October 26th despite a preservation order.

0:57:5.270 --> 0:57:5.610

Judge Robert W Lehrburger
Umm.

0:57:5.220 --> 0:57:11.240

Stein, Wendy R.
And so we believe the limitations that defendant is trying to place is because he doesn't want to certify that he's not altered.

0:57:18.50 --> 0:57:19.620

Robert Amenn

And that is what I agreed to.

0:57:11.250 --> 0:57:20.480

Stein, Wendy R.

The laptop he wants to limit that certification to, just he hasn't altered it during the three day examination and and so that's the issue, OK.

0:57:20.50 --> 0:57:21.580

Robert Amenn

Yeah, I agree to that.

0:57:21.690 --> 0:57:22.320

Robert Amenn

I do not.

0:57:22.330 --> 0:57:24.440

Robert Amenn

I didn't agree to have a scope beyond that.

0:57:24.450 --> 0:57:28.480

Robert Amenn

That's not necessary for this preservation article.

0:57:28.650 --> 0:57:29.500

Robert Amenn

You, you, you.

0:57:29.550 --> 0:57:36.200

Robert Amenn

You were concerned that I would interfere with the laptop while it was in the room and I to short circuit things and to move things forward.

0:57:36.300 --> 0:57:39.420

Robert Amenn

I agree to swear with because I have no intention of doing any of that.

0:57:39.610 --> 0:57:40.440

Robert Amenn

It's not necessary.

0:57:41.560 --> 0:57:42.170

Stein, Wendy R.

Right, right.

0:57:40.450 --> 0:57:52.850

Robert Amenn

It's not like and you and enjoyed like to make sure that this clause is specific to what we agreed to and what I did to alleviate your concerns and not.

0:57:51.980 --> 0:57:53.660

Stein, Wendy R.

So we haven't reached an agreement.

0:57:54.120 --> 0:57:55.130

Judge Robert W Lehrburger

Hold, hold, hold on.

0:57:53.790 --> 0:57:55.170

Stein, Wendy R.

We've never reached an agreement on this.

0:57:55.140 --> 0:57:55.570

Judge Robert W Lehrburger

Hold on.

0:57:55.580 --> 0:57:55.970

Judge Robert W Lehrburger

Hold on.

0:57:55.980 --> 0:57:56.390

Judge Robert W Lehrburger

Hold on.

0:57:56.400 --> 0:57:56.740

Judge Robert W Lehrburger

Hold on.

0:57:56.750 --> 0:58:13.80

Judge Robert W Lehrburger

Hold what's past is past, so all that can be done at this point in terms of this protocol is that he sign a certification that from this point onward he has not altered or tampered with the laptop.

0:58:13.210 --> 0:58:22.760

Judge Robert W Lehrburger

If there was some altering or tampering that already occurred, then that's something that may come up in the forensic investigation or through other discovery.

0:58:23.110 --> 0:58:32.350

Judge Robert W Lehrburger

But if he he it can't be a condition of this, that he has to sign that he hasn't already done anything, because then what's, what's going to happen here?

0:58:35.350 --> 0:58:42.460

Judge Robert W Lehrburger

I mean, if if he, in other words, if he were, if if he had tampered realtor, I guess he could condition could be have to tell us.

0:58:42.470 --> 0:58:49.470

Judge Robert W Lehrburger

But that's forcing him to make an admission in connection with just getting the protocol, and I don't think he should have to do that.

0:58:51.650 --> 0:58:56.520

Stein, Wendy R.

Well, then, we're agreeable to adding the clause while they are contained.

0:59:2.990 --> 0:59:4.980

Judge Robert W Lehrburger

Mr yeah.

0:58:56.750 --> 0:59:10.350

Stein, Wendy R.

I mean, I think it has to be, though, not just the three days I I guess can it be then from this point forward because we with without prejudice to our right to argue in the case that that this laptop was altered since October 26th?

0:59:10.710 --> 0:59:14.60

Judge Robert W Lehrburger

Of course, that so, Mr Amend, do you have any problem with that?

0:59:15.40 --> 0:59:15.910

Robert Amenn

No, I I don't.

0:59:16.180 --> 0:59:18.970

Robert Amenn

I'm I I do have.

0:59:18.980 --> 0:59:46.870

Robert Amenn

I just wanna call out one of the reasons why I have concern about Archer Hall, not because they're unprofessional, but because they've they witnessed a significant conversation around this and I feel that if I were in their shoes, my refusal to to agree to things before on would make it difficult for them to not think that I'm hiding things and and that doesn't like.

0:59:46.880 --> 0:59:51.240

Robert Amenn

That's one of the reasons why I would have I I didn't like when it didn't happened.

0:59:51.250 --> 0:59:57.520

Robert Amenn

They they were born on the meeting for under different pretexts and then this this issue came up and it was spent the whole entire meeting on it.

0:59:57.530 --> 1:0:6.10

Robert Amenn

I think it potentially could produce anyone when when you call someone you know when you're saying that I violated orders and and it's concern of mine.

1:0:5.850 --> 1:0:7.260

Judge Robert W Lehrburger

Well, not look none.

1:0:7.310 --> 1:0:8.760

Judge Robert W Lehrburger

I understand your point.

1:0:8.830 --> 1:0:23.380

Judge Robert W Lehrburger

Nothing has been proven yet and there is no reason for anybody to draw any assumptions and all that Archer is going to do is actually conduct the forensic examination.

1:0:24.40 --> 1:0:24.990

Judge Robert W Lehrburger

There's nothing.

1:0:25.0 --> 1:0:26.250

Judge Robert W Lehrburger

I mean, that's pretty.

1:0:26.780 --> 1:0:33.970

Judge Robert W Lehrburger

In other words, they're not gonna be, umm, doing anything else other than searching and seeing what they can find.

1:0:34.580 --> 1:0:37.190

Judge Robert W Lehrburger

And that's what we need to do.

1:0:37.240 --> 1:0:41.0

Judge Robert W Lehrburger

So I'm not troubled by the issue that you raised.

1:0:41.10 --> 1:0:53.410

Judge Robert W Lehrburger

I understand it and and I'm confident that that will not affect Archers ability to objectively do what they are tasked with doing.

1:0:55.30 --> 1:1:5.530

Judge Robert W Lehrburger

Umm, alright, so the UM so there's going to be a signed certification of no altering or tampering sense from this date forward.

1:1:6.190 --> 1:1:9.820

Judge Robert W Lehrburger

Uh and I and with reservation, with with.

1:1:9.830 --> 1:1:16.150

Judge Robert W Lehrburger

Without that being a waiver of any, anything that the plaintiff wants to challenge, that may have happened beforehand.

1:1:16.770 --> 1:1:19.420

Stein, Wendy R.

Umm, your Honor, can I just make one clarification?

1:1:19.430 --> 1:1:27.240

Stein, Wendy R.

There was something in the defendants submission today that also leads us to believe it's on page two of eight and three of eight.

1:1:27.250 --> 1:1:30.160

Stein, Wendy R.

There's some kind of partial view of unallocated space.

1:1:30.170 --> 1:1:32.640

Stein, Wendy R.

Figure one is that from the laptop Mr Amen.

1:1:34.80 --> 1:1:35.810

Robert Amenn

No, that's an example.

1:1:37.220 --> 1:1:39.550

Robert Amenn

Let me let me make sure we're before I answer.

1:1:44.830 --> 1:1:46.930

Stein, Wendy R.

Yes, umm.

1:1:39.770 --> 1:1:46.960

Robert Amenn

I should so are you talking about the diagram partial view of unallocated space and figure one?

1:1:52.270 --> 1:1:52.470

Stein, Wendy R.

OK.

1:1:58.490 --> 1:1:58.890

Judge Robert W Lehrburger

Got it.

1:2:2.520 --> 1:2:2.670

Judge Robert W Lehrburger
OK.

1:1:47.50 --> 1:2:4.730

Robert Amenn

No, this is completely made up like frig for educational purposes to to explain how how how file, how file covering works and how it potentially could pull in information from other beyond what what is in base caps file.

1:2:3.200 --> 1:2:12.720

Stein, Wendy R.

Oh, OK then can I seek one other clarification, Your Honor, if I may, instead of instead of it going from October 26th or today, could we have a middle ground?

1:2:12.730 --> 1:2:16.310

Stein, Wendy R.

So, for example, since Thanksgiving when we started negotiating this protocol.

1:2:17.90 --> 1:2:18.500

Judge Robert W Lehrburger
Well, it depends, Mr Rahman.

1:2:18.510 --> 1:2:19.400

Judge Robert W Lehrburger
Are you comfortable with that?

1:2:19.30 --> 1:2:19.880

Robert Amenn
I.

1:2:19.950 --> 1:2:20.540

Robert Amenn
No, I'm.

1:2:21.710 --> 1:2:22.700

Judge Robert W Lehrburger
OK, fine.

1:2:20.550 --> 1:2:23.810

Robert Amenn

I'm not comfortable with expanding this right like like like.

1:2:23.210 --> 1:2:23.840

Judge Robert W Lehrburger
OK.

1:2:23.930 --> 1:2:24.600

Judge Robert W Lehrburger
That that's fine.

1:2:24.610 --> 1:2:27.440

Judge Robert W Lehrburger
You don't need to explain further, so no, it's gonna be from today.

1:2:30.180 --> 1:2:32.290

Judge Robert W Lehrburger
All right, so UM.

1:2:35.340 --> 1:2:35.750

Judge Robert W Lehrburger
All right.

1:2:35.760 --> 1:2:45.520

Judge Robert W Lehrburger
And then there was some additional language at issue about rich preserving the right to return to court will go with plaintiffs language.

1:2:45.530 --> 1:2:49.760

Judge Robert W Lehrburger
There they get to preserve that right and it does incorporate the.

1:2:51.570 --> 1:3:1.730

Judge Robert W Lehrburger
Concept of negotiating to collecting at an alternative location and they have to come to court so the court has to make the decision.

1:3:3.390 --> 1:3:4.510

Robert Amenn
So ohk OK.

1:3:7.560 --> 1:3:35.140

Robert Amenn
I want to make sure I understand this the the the Court order allows me to choose where this happens and do I like in order for them to like we the, the defendant and I the plaintiff and I have negotiated this protocol specifically to make sure that the laptop doesn't the laptop or its contents leaves my possession.

1:3:35.510 --> 1:3:39.860

Robert Amenn
That's not Basecamp, so this their language.

1:3:40.90 --> 1:3:41.940

Robert Amenn
They have to get a court order to change that.

1:3:42.210 --> 1:3:42.520

Judge Robert W Lehrburger
All.

1:3:41.950 --> 1:3:42.550

Robert Amenn
Is that correct?

1:3:42.530 --> 1:3:44.400

Judge Robert W Lehrburger
All they're doing is reserving their rights.

1:3:44.740 --> 1:3:44.960

Robert Amenn
OK.

1:3:44.770 --> 1:3:49.340

Judge Robert W Lehrburger
So you guys can still negotiate so they can avoid going to court.

1:3:49.450 --> 1:3:51.540

Judge Robert W Lehrburger
They only go to court if you guys can't reach agreement.

1:3:52.680 --> 1:3:52.980

Robert Amenn
OK.

1:3:53.430 --> 1:3:55.620

Judge Robert W Lehrburger
Alright, application identification.

1:3:56.250 --> 1:3:57.380

Judge Robert W Lehrburger
What was your concern there?

1:3:59.650 --> 1:3:59.940

Judge Robert W Lehrburger
It.

1:3:59.470 --> 1:4:1.350

Robert Amenn
I don't have any more concern with it.

1:4:1.790 --> 1:4:2.840

Judge Robert W Lehrburger
OK, fine.

1:4:3.70 --> 1:4:5.130

Judge Robert W Lehrburger
Let's move on then. Processing.

1:4:6.130 --> 1:4:7.470

Robert Amenn
Oh, actually, let me.

1:4:7.480 --> 1:4:8.620

Robert Amenn
Let's go back to that.

1:4:8.800 --> 1:4:9.40

Judge Robert W Lehrburger
OK.

1:4:8.690 --> 1:4:9.800

Robert Amenn
This was added.

1:4:9.870 --> 1:4:35.220

Robert Amenn
This was added because the only applications that that our base CAP can search or applications that meet this criteria, and I don't see that that in the list so that they can't like your your order like base cap agreed that the only only application search would be the ones that have been installed.

1:4:37.820 --> 1:4:38.170

Robert Amenn
So.

1:4:39.730 --> 1:4:42.20

Robert Amenn
Ah, give me.

1:4:42.30 --> 1:4:43.620

Robert Amenn
I'm sorry, I'm trying to try to catch my thoughts.

1:4:45.30 --> 1:4:57.670

Robert Amenn
This language is the the language is not complete, that it that the applications that that can be investigated are restricted to this list and and I'd like to make sure that the language is, is, is accurately represents that.

1:4:58.920 --> 1:5:12.480

Robert Amenn
All this does is say that they're going to look at the the look at what, what what files are installed, but that doesn't that like the other thing that we agreed to is that they would only be able to look at applications in their searching to the ones that have been installed.

1:5:37.910 --> 1:5:38.230

Robert Amenn
Right.

1:5:13.170 --> 1:5:41.70

Judge Robert W Lehrburger

Well, so the way that I just want to make sure we're looking at the same thing I see the examiner will open the image and look at the installed applications in and then there's an added portion, although all of it struck out the standard installation folders, program files and program files, there's a parenthesis with X86 folders and as documented in all registry hives was that was that the additional language you wanted in there or not?

1:5:43.960 --> 1:5:44.260

Judge Robert W Lehrburger
OK.

1:5:41.690 --> 1:5:57.220

Robert Amenn

It's there right now that language is as it exists, but the the language that needs to be added was that the forensic examiner will only examine applications that have been installed and that's not that's not included in it like this, it's.

1:5:56.840 --> 1:5:57.660

Judge Robert W Lehrburger
As opposed to what?

1:5:59.270 --> 1:6:1.520

Robert Amenn

The This this basically they're gonna look at the list.

1:6:1.650 --> 1:6:2.420

Robert Amenn

They don't need to look.

1:6:2.430 --> 1:6:5.140

Robert Amenn

There's no need to look at the list that we we put this.

1:6:5.150 --> 1:6:9.770

Robert Amenn

This clause is incompletely put in what we agreed to is not represented by this clause.

1:6:9.640 --> 1:6:9.970

Judge Robert W Lehrburger
OK.

1:6:9.980 --> 1:6:13.440

Judge Robert W Lehrburger

So let me just ask Miss Stein, what's the status of this from your perspective?

1:6:14.40 --> 1:6:17.250

Stein, Wendy R.

Umm, I'd like to defer to Tom Plunkett, but I will.

1:6:17.260 --> 1:6:24.410

Stein, Wendy R.

Just add that this is another example of the defendant trying to limit what we can look at on the laptop and I defer to Tom.

1:6:23.610 --> 1:6:29.290

Judge Robert W Lehrburger

Well, I understood, but he he has a right to be concerned about that and he is concerned about.

1:6:30.890 --> 1:6:33.760

Judge Robert W Lehrburger

Protecting confidential and attorney client information.

1:6:33.770 --> 1:6:38.250

Judge Robert W Lehrburger

So it's a it's fine to ask and for him to raise that concern.

1:6:40.220 --> 1:6:42.60

Judge Robert W Lehrburger

OK, so you wanted, yeah.

1:6:40.840 --> 1:6:44.320

Stein, Wendy R.

So Tom can can can Tom just speak to that briefly though that Section B?

1:6:45.180 --> 1:6:59.20

Tom Plunkett

Yes, the intention of that Section B is to identify those files that may potentially the chat applications or other file transfer applications that may be installed, which should be subject to the analysis.

1:7:1.100 --> 1:7:1.490

Judge Robert W Lehrburger

OK.

1:7:1.500 --> 1:7:5.930

Judge Robert W Lehrburger

But but Mr Rahman has raised a concern about the scope of that.

1:7:5.940 --> 1:7:11.630

Judge Robert W Lehrburger

I'm not sure I understand what would be included or could be included beyond applications installed.

1:7:11.850 --> 1:7:13.930

Robert Amenn

The that.

1:7:13.420 --> 1:7:14.960

Judge Robert W Lehrburger

Do you understand what this concern is?

1:7:17.70 --> 1:7:18.260

Robert Amenn

We yeah.

1:7:18.330 --> 1:7:18.570

Robert Amenn

Yeah.

1:7:20.140 --> 1:7:20.360

Judge Robert W Lehrburger

Good.

1:7:18.580 --> 1:7:20.620

Robert Amenn

OK. So.

1:7:16.730 --> 1:7:29.390

Tom Plunkett

I I I do not understand that or no because we are looking to to identify those applications that are installed which gives us the information we need to go and search those applications.

1:7:29.640 --> 1:7:29.950

Judge Robert W Lehrburger

Right.

1:7:29.980 --> 1:7:30.240

Robert Amenn

Sure.

1:7:29.960 --> 1:7:30.970

Judge Robert W Lehrburger

So, Mr Rahman, what?

1:7:30.980 --> 1:7:33.120

Judge Robert W Lehrburger

What's not here that needs to be here?

1:7:33.420 --> 1:7:40.870

Robert Amenn

What we agreed to was that the search would be limited to the files that were in the applications that they discovered in.

1:7:40.980 --> 1:7:43.260

Robert Amenn

In this search and that's missing.

1:7:42.690 --> 1:7:44.300

Judge Robert W Lehrburger

As opposed as opposed to what?

1:7:44.310 --> 1:7:46.70

Judge Robert W Lehrburger

What's the problematic language here?

1:7:47.580 --> 1:7:48.60

Judge Robert W Lehrburger

It says.

1:7:47.420 --> 1:7:48.650

Robert Amenn

The It's not the problem.

1:7:48.660 --> 1:7:49.990

Robert Amenn

There's no language problematic.

1:7:50.0 --> 1:7:53.400

Robert Amenn

It's the the the limit, the exclusion of language that we agreed to.

1:7:54.500 --> 1:7:55.740

Judge Robert W Lehrburger

And that language is.

1:7:56.390 --> 1:8:5.240

Robert Amenn

That the search that the forensic search on of applications will be listed limited to those those that have been installed.

1:8:5.730 --> 1:8:13.200

Stein, Wendy R.

And I'd like to object because I think what the defendant is saying is that applications that were already there can't be searched.

1:8:13.210 --> 1:8:14.660

Stein, Wendy R.

I mean, we obviously can't agree to that.

1:8:14.670 --> 1:8:17.230

Stein, Wendy R.

We need to find the information wherever it resides on the laptop.

1:8:17.970 --> 1:8:18.960

Robert Amenn

No, that's not.

1:8:18.970 --> 1:8:19.890

Robert Amenn

That's not what I'm saying.

1:8:19.900 --> 1:8:23.790

Robert Amenn

Because Archer holes if if an application has been installed, there will be a record in there.

1:8:25.740 --> 1:8:26.550

Stein, Wendy R.

It doesn't matter.

1:8:26.560 --> 1:8:29.320

Stein, Wendy R.

We need to find our information wherever it resides in the laptop.

1:8:29.270 --> 1:8:29.720

Judge Robert W Lehrburger

Hold on.

1:8:29.730 --> 1:8:30.80

Judge Robert W Lehrburger

Hold.

1:8:30.90 --> 1:8:30.520

Judge Robert W Lehrburger

Hold on.

1:8:28.280 --> 1:8:30.780

Robert Amenn

But but you're backing away from what you agreed.

1:8:30.530 --> 1:8:31.510

Judge Robert W Lehrburger

Stop, stop, stop.

1:8:33.700 --> 1:8:47.440

Judge Robert W Lehrburger

The version I have has is all crossed out, but I assumed that that crossed out was by Mr Ahmet and it's titled Application Identification, the language that's there.

1:8:47.450 --> 1:8:52.720

Judge Robert W Lehrburger

It says the examiner will open the image and look at the installed applications.

1:8:52.730 --> 1:8:57.550

Judge Robert W Lehrburger

So it seems that that language was already there in what the plaintiff proposed.

1:8:57.560 --> 1:8:58.790

Judge Robert W Lehrburger
And am I wrong this time?

1:8:58.220 --> 1:9:1.910

Stein, Wendy R.
It they're they're looking at it, but they're not limited to anything.

1:9:2.140 --> 1:9:3.210

Stein, Wendy R.
They're just looking at it.

1:9:3.760 --> 1:9:4.20

Judge Robert W Lehrburger
OK.

1:9:7.30 --> 1:9:8.660

Robert Amenn
But that's not what we agreed to.

1:9:10.220 --> 1:9:13.920

Stein, Wendy R.
Unfortunately, we've not reached agreement on most terms in this protocol.

1:9:15.400 --> 1:9:15.790

Judge Robert W Lehrburger
OK.

1:9:12.940 --> 1:9:15.930

Robert Amenn
No, no, we did it reach agreement and and I'll defer to doctor Hall.

1:9:15.800 --> 1:9:17.470

Judge Robert W Lehrburger
But but but but but but it.

1:9:17.480 --> 1:9:27.710

Judge Robert W Lehrburger
But again, Mr Rahman I I'm not fully getting exactly what it is that you're trying to not include here.

1:9:28.310 --> 1:9:29.640

Robert Amenn
I'm not trying, yeah.

1:9:28.100 --> 1:9:30.900

Judge Robert W Lehrburger
What's something that's not in an installed application?

1:9:31.860 --> 1:9:32.180

Robert Amenn

So.

1:9:35.70 --> 1:9:40.800

Judge Robert W Lehrburger

Were you want or is your concern that you somehow you think this goes beyond what they're allowed to search for?

1:9:41.170 --> 1:9:42.300

Robert Amenn

Yes, that's correct.

1:9:42.590 --> 1:9:43.60

Robert Amenn

That's correct.

1:9:40.810 --> 1:9:43.640

Judge Robert W Lehrburger

In other words, whatever they've agreed, OK, so this.

1:9:43.650 --> 1:9:48.430

Judge Robert W Lehrburger

But this is just telling us where they're going to look.

1:9:48.520 --> 1:9:52.710

Judge Robert W Lehrburger

Doesn't tell us that they can go beyond the information they can look for.

1:9:59.380 --> 1:10:2.530

Robert Amenn

I for the for the for the there's more important issues.

1:10:3.710 --> 1:10:4.120

Judge Robert W Lehrburger

OK.

1:10:4.130 --> 1:10:4.820

Judge Robert W Lehrburger

Yeah, let's, let's.

1:10:2.540 --> 1:10:5.140

Robert Amenn

For expediency, I'm OK leaving it.

1:10:4.830 --> 1:10:5.500

Judge Robert W Lehrburger

Let's move on.

1:10:5.150 --> 1:10:5.630

Robert Amenn

Leaving it.

1:10:5.780 --> 1:10:6.420

Robert Amenn

Let's move on.

1:10:6.70 --> 1:10:7.180

Judge Robert W Lehrburger

OK, OK.

1:10:7.230 --> 1:10:8.420

Judge Robert W Lehrburger

So then there's processing.

1:10:9.80 --> 1:10:13.760

Judge Robert W Lehrburger

Uh, and there were a few things you wanted here.

1:10:16.60 --> 1:10:19.760

Judge Robert W Lehrburger

Has any of this in this section been resolved misdoing?

1:10:20.640 --> 1:10:21.370

Stein, Wendy R.

No, it's not her.

1:10:21.960 --> 1:10:22.330

Judge Robert W Lehrburger

OK.

1:10:20.390 --> 1:10:24.370

Robert Amenn

Let no it's what?

1:10:24.380 --> 1:10:26.330

Robert Amenn

What section is this on six?

1:10:26.380 --> 1:10:27.650

Robert Amenn

Look my thing, OK?

1:10:26.400 --> 1:10:28.910

Judge Robert W Lehrburger

This is this is processing.

1:10:31.370 --> 1:10:32.200

Robert Amenn

Yeah, I'm looking.

1:10:35.110 --> 1:10:35.330

Judge Robert W Lehrburger

Again.

1:10:32.530 --> 1:10:35.860

Robert Amenn

For just one second here I I don't.

1:10:35.910 --> 1:10:38.160

Robert Amenn

I I don't have any more issues with this.

1:10:38.170 --> 1:10:39.440

Robert Amenn

Let me just double check it.

1:10:39.450 --> 1:10:40.480

Robert Amenn

I'm gonna look at what?

1:10:40.650 --> 1:10:41.240

Robert Amenn

Like what?

1:10:41.250 --> 1:10:42.840

Robert Amenn

Miss, like we're gonna.

1:10:42.850 --> 1:10:43.160

Robert Amenn

I'm.

1:10:43.210 --> 1:10:45.890

Robert Amenn

I'm gonna ask that we include what?

1:10:46.30 --> 1:10:51.70

Robert Amenn

What Miss Stein submitted with with her letter yesterday for this section.

1:10:53.470 --> 1:10:53.820

Stein, Wendy R.

OK.

1:10:53.840 --> 1:10:54.380

Robert Amenn

Let me look at the.

1:10:53.830 --> 1:10:56.750

Stein, Wendy R.

So that's for six for 6C.

1:10:56.760 --> 1:11:3.200

Stein, Wendy R.

And we also just like to clarify the record that the defendant agreed to 6B as it stated in E CF62-1.

1:11:3.580 --> 1:11:5.970

Judge Robert W Lehrburger

OK, alright.

1:11:6.20 --> 1:11:8.760

Judge Robert W Lehrburger

So we resolved that. Umm.

1:11:8.520 --> 1:11:16.280

Robert Amenn

Let me let me let me give me a second to read like through six, I don't have any of my notes at there's no issues, but I wanna double check if you don't mind, it should take me a couple minutes.

1:11:15.530 --> 1:11:17.50

Judge Robert W Lehrburger

Sure, go ahead.

1:11:30.190 --> 1:11:32.930

Robert Amenn

I I wanna clarification to make sure that this is the case.

1:11:35.130 --> 1:11:38.670

Robert Amenn

Unallocated space and umm.

1:11:39.210 --> 1:11:47.10

Robert Amenn

Slack space will not be indexed or searched if none like the way this is written. Umm.

1:11:48.440 --> 1:11:53.920

Robert Amenn

None of the uh see allocated space on the laptop.

1:11:53.930 --> 1:12:9.30

Robert Amenn

Will unallocated space will be indexed if the analysis of allocated space confirms transfer of base cap

files to a source not owned or controlled by base cap, what is the definition of for for the purpose of this clause allocated space?

1:12:12.170 --> 1:12:14.250

Stein, Wendy R.

Believe it's active files, but I defer to Tom.

1:12:14.480 --> 1:12:24.60

Tom Plunkett

Yes, uh allocated space is the area on the disk that contains the files that are accessible by the general user of that computer.

1:12:25.50 --> 1:12:25.520

Robert Amenn

Cool.

1:12:25.670 --> 1:12:32.480

Robert Amenn

So if there's something in unallocated space, he will not like you.

1:12:32.490 --> 1:12:34.680

Robert Amenn

You're not gonna initially search it or index it.

1:12:34.870 --> 1:12:35.340

Robert Amenn

That's fine.

1:12:35.410 --> 1:12:36.900

Robert Amenn

OK, I'm I'm good with this section.

1:12:38.600 --> 1:12:41.660

Judge Robert W Lehrburger

OK, the next section is forensic analysis.

1:12:45.400 --> 1:12:49.830

Judge Robert W Lehrburger

And you had some language that you would wanted at the end is have.

1:12:49.920 --> 1:12:50.770

Judge Robert W Lehrburger

Has this been resolved?

1:12:51.470 --> 1:12:53.480

Robert Amenn

What was the language that I required at the end?

1:12:53.490 --> 1:12:54.880

Robert Amenn

I I don't have it handy, I'm sorry.

1:12:58.740 --> 1:12:59.120

Judge Robert W Lehrburger

What?

1:12:55.140 --> 1:13:2.860

Stein, Wendy R.

Yeah, we we can't agree to what he was trying to impose the limit of 5D about linked files, yeah.

1:13:1.770 --> 1:13:15.660

Judge Robert W Lehrburger

OK, OK, so so the language is all analysis will be limited to what is outlined in Section 5 of this document, particularly section 5D and Miss Stein.

1:13:16.230 --> 1:13:18.740

Judge Robert W Lehrburger

What is it that that excludes then for example?

1:13:19.840 --> 1:13:29.350

Stein, Wendy R.

So if it's, I think what he it was initially meant to limit things to OneDrive and the limit he proposed to section 5D, which has been rejected.

1:13:29.360 --> 1:13:38.600

Stein, Wendy R.

So we're fine with this language in light of the fact that 5D is now written as it appears in EC F62-1.

1:13:39.130 --> 1:13:39.450

Judge Robert W Lehrburger

OK.

1:13:50.20 --> 1:13:50.260

Judge Robert W Lehrburger

OK.

1:13:52.200 --> 1:13:52.460

Judge Robert W Lehrburger

Right.

1:13:40.510 --> 1:13:53.410

Stein, Wendy R.

Although with the with the addition that you're honor made that there could be additional ah, 5D is now been edited because they can use something beyond axiom T search or Excel I guess.

1:13:58.720 --> 1:13:59.390

Robert Amenn

Yes, that's fine.

1:13:53.400 --> 1:13:59.470

Judge Robert W Lehrburger

Alright, so we've resolved the forensic analysis subsection Miss Doctor.

1:13:59.890 --> 1:14:0.310

Stein, Wendy R.

Yes, Sir.

1:13:59.730 --> 1:14:0.780

Judge Robert W Lehrburger

OK, good.

1:14:0.850 --> 1:14:3.320

Judge Robert W Lehrburger

Alright, review of files and activity.

1:14:4.130 --> 1:14:9.60

Judge Robert W Lehrburger

Umm, the little one files.

1:14:9.350 --> 1:14:13.400

Judge Robert W Lehrburger

There were a couple of additions that Mister Amen proposed.

1:14:13.410 --> 1:14:14.930

Judge Robert W Lehrburger

Where are we on this, Miss Stein?

1:14:18.190 --> 1:14:19.30

Stein, Wendy R.

Uh, so?

1:14:24.740 --> 1:14:39.830

Stein, Wendy R.

This this relates to so he would be getting the list first, he would have the 14 days and then give us an affidavit of files he believed do not relate to our client or its business or its clients. Uh.

1:14:41.340 --> 1:14:44.640

Judge Robert W Lehrburger

And what about the items that he had proposed to be added?

1:14:46.30 --> 1:14:47.530

Judge Robert W Lehrburger

Is there anything still in contention?

1:14:49.760 --> 1:14:50.870

Judge Robert W Lehrburger
Some of them seemed innocuous.

1:14:57.390 --> 1:14:58.720

Stein, Wendy R.
So this is a different.

1:14:58.730 --> 1:15:4.610

Stein, Wendy R.
So if you're looking at 51-3, it's different language than 62-1.

1:15:4.910 --> 1:15:5.960

Judge Robert W Lehrburger
OK, so where is?

1:15:5.970 --> 1:15:14.130

Judge Robert W Lehrburger
Where is the disagreement now on and tell me what the disagreement is in the relevant section.

1:15:15.0 --> 1:15:28.730

Stein, Wendy R.
OK, so I believe one disagreement is that he would like to add a third party review mechanism and we've taken that out of 6E1 as set forth and E CF62-1.

1:15:28.740 --> 1:15:32.280

Stein, Wendy R.
It just has him having a 14 day period and then us having a 14 day period.

1:15:32.820 --> 1:15:33.100

Judge Robert W Lehrburger
Right.

1:15:33.110 --> 1:15:35.820

Judge Robert W Lehrburger
Him, him or his counsel, if he has counsel, who appears.

1:15:37.600 --> 1:15:38.120

Stein, Wendy R.
Yes, your honor.

1:15:37.400 --> 1:15:38.570

Judge Robert W Lehrburger
But you know what?

1:15:38.580 --> 1:15:40.700

Judge Robert W Lehrburger
Why would there be third party review Mr Newman?

1:15:43.0 --> 1:15:56.320

Robert Amenn

This this section is completely changed to what we agreed to, and my major concern, which I mean maybe you're not gonna be very sympathetic towards, but the plaintiff was sympathetic.

1:15:56.410 --> 1:15:57.980

Robert Amenn

And now they're changing.

1:16:4.930 --> 1:16:5.210

Judge Robert W Lehrburger
Right.

1:16:9.40 --> 1:16:9.200

Judge Robert W Lehrburger
Yeah.

1:15:57.990 --> 1:16:11.300

Robert Amenn

It was that they assured me that I would be able to review the contents first to it called out any files before they got to look at it before they got to look at it.

1:16:11.310 --> 1:16:12.310

Judge Robert W Lehrburger
Isn't OK.

1:16:13.30 --> 1:16:28.130

Robert Amenn

And and then if I if I called out files that contained information that was not theirs, that they agreed that some neutral party would decide whether it was that they wouldn't see it, that a neutral party would see it.

1:16:28.890 --> 1:16:35.200

Robert Amenn

And that made me very comfortable with the process and I'd like to stick to that.

1:16:35.210 --> 1:16:39.980

Robert Amenn

But they're changing it because they got me like we swapped something.

1:16:39.990 --> 1:16:50.70

Robert Amenn

I agreed to email search and I agreed to search things that I wouldn't have agreed to if that clause wasn't given to me.

1:16:50.80 --> 1:16:57.630

Robert Amenn

So now they got what they wanted with that, and now they're changing it unilaterally on after they already agreed to it.

1:16:58.150 --> 1:16:58.510

Judge Robert W Lehrburger
I I.

1:16:57.980 --> 1:17:8.710

Robert Amenn

They sent that document over and I'd like them to keep to what they originally agreed because it it protects my data better than the cord is allowed to further protection.

1:17:5.990 --> 1:17:9.470

Judge Robert W Lehrburger
Well, what so so, so hold on.

1:17:11.730 --> 1:17:13.960

Judge Robert W Lehrburger
I just want to read this provision as it's written.

1:17:13.970 --> 1:17:14.210

Judge Robert W Lehrburger
Hold on.

1:17:35.10 --> 1:17:52.810

Judge Robert W Lehrburger

And so just looking back at the version I was looking at, you would want it to include a provision along the lines of if an agreement cannot be reached, the parties can request the court or mutually agreed upon third party mediator to settle any disputes was was that what you were looking for.

1:17:52.750 --> 1:17:53.410

Robert Amenn
Yeah, yeah.

1:17:54.130 --> 1:17:54.840

Judge Robert W Lehrburger
OK.

1:17:54.930 --> 1:17:59.30

Judge Robert W Lehrburger
And so let me ask Miss Stein, what happens if there is a dispute?

1:18:0.730 --> 1:18:1.40

Stein, Wendy R.
Yes.

1:18:1.50 --> 1:18:13.580

Stein, Wendy R.

So I think if we merge the two, so if both sides get the list of files at the same time, which is more fair and then defendant still has the 1st 14 days as we've presented in 62-1.

1:18:14.210 --> 1:18:20.430

Stein, Wendy R.

The way we have it there is if we agree that files do not relate to base cap, such files will be destroyed.

1:18:22.580 --> 1:18:24.380

Judge Robert W Lehrburger

And what if you don't agree?

1:18:25.820 --> 1:18:27.690

Stein, Wendy R.

Yeah, I mean then we would have a dispute.

1:18:27.700 --> 1:18:33.790

Stein, Wendy R.

I mean our issue with going to mediation is that this has been an incredibly expensive.

1:18:34.820 --> 1:18:36.570

Judge Robert W Lehrburger

You we wouldn't be mediation.

1:18:36.580 --> 1:18:40.170

Judge Robert W Lehrburger

You would just be come back to court to solve the dispute like any other dispute.

1:18:40.150 --> 1:18:42.660

Stein, Wendy R.

Yes, that that would be fine and that would be the default.

1:18:42.670 --> 1:18:44.40

Stein, Wendy R.

We would have to come to court, your Honor.

1:18:44.50 --> 1:18:45.680

Stein, Wendy R.

Yes, if there were a display.

1:18:44.420 --> 1:18:45.710

Judge Robert W Lehrburger

OK, so that's what we'll do.

1:18:46.570 --> 1:18:53.260

Robert Amenn

So but can I have the requirement that they dangled before me that I get the review the files first?

1:18:53.350 --> 1:18:54.940

Robert Amenn

Why did they need to review them? First?

1:18:54.950 --> 1:19:3.340

Robert Amenn

I will be able to and then I will call out the issues that I have and then they they can dispute it and that protects me.

1:19:9.840 --> 1:19:10.910

Judge Robert W Lehrburger

So, wait, wait, hold on.

1:19:3.350 --> 1:19:11.310

Robert Amenn

It adds a level of protection that they offered to me and I agreed to give them things in return, and I'd like that to be preserved.

1:19:10.960 --> 1:19:11.770

Judge Robert W Lehrburger

So, so.

1:19:11.820 --> 1:19:12.410

Judge Robert W Lehrburger

So hold on.

1:19:12.420 --> 1:19:14.350

Judge Robert W Lehrburger

I I I do want to make sure I understand.

1:19:14.620 --> 1:19:16.110

Judge Robert W Lehrburger

I see the way it's written here.

1:19:16.160 --> 1:19:28.560

Judge Robert W Lehrburger

Each side at the gets the the list of files and other data, but you then have 14 days to identify and they have 14 days after that.

1:19:28.570 --> 1:19:30.490

Judge Robert W Lehrburger

But but what's wrong with them getting a list?

1:19:30.500 --> 1:19:31.580

Judge Robert W Lehrburger

They're not getting the content.

1:19:33.260 --> 1:19:35.400

Robert Amenn

My understanding is that they will have the content as well.

1:19:35.380 --> 1:19:35.700

Judge Robert W Lehrburger

Ohk.

1:19:35.710 --> 1:19:36.90

Judge Robert W Lehrburger
OK.

1:19:36.140 --> 1:19:38.820

Judge Robert W Lehrburger
Let me ask Miss Stone help me understand.

1:19:40.830 --> 1:19:41.120

Stein, Wendy R.
Yeah.

1:19:41.130 --> 1:19:44.200

Stein, Wendy R.
So I think this relates to Section 7.

1:19:44.210 --> 1:19:47.620

Stein, Wendy R.
So I think it might have to be reviewed in tandem with this.

1:19:48.340 --> 1:19:48.520

Judge Robert W Lehrburger
OK.

1:19:48.600 --> 1:19:49.90

Stein, Wendy R.
Umm.

1:20:0.980 --> 1:20:1.300

Judge Robert W Lehrburger
Period.

1:19:49.130 --> 1:20:9.590

Stein, Wendy R.
So in seven a once the search is completed, Archer Hall would place extracted data on a USB drive and then all the extracted data in section 7B gets designated highly confidential and then in section C the plaintiff does get a copy of the extracted data drive and then defending gets to access it by relativity.

1:20:11.440 --> 1:20:15.830

Stein, Wendy R.
And and then a copy of any report is provided to both sides.

1:20:16.110 --> 1:20:19.130

Stein, Wendy R.
So this has to be read in conjunction with the other section.

1:20:21.20 --> 1:20:24.530

Stein, Wendy R.
So we we both get a list of files and then we also get the content.

1:20:24.540 --> 1:20:26.930

Stein, Wendy R.

But again, the content is attorneys eyes only.

1:20:27.500 --> 1:20:33.180

Stein, Wendy R.

We we had it as the default, highly confidential everything we can change that to attorneys eyes only if you like.

1:20:33.430 --> 1:20:39.600

Stein, Wendy R.

But we need to, I mean these search terms, we worked very hard to limit them to just file names of base cap.

1:20:39.610 --> 1:20:46.90

Stein, Wendy R.

So the proposition that we couldn't then see our own files is is is not what should happen here.

1:20:46.590 --> 1:20:47.310

Robert Amenn

I can.

1:20:47.360 --> 1:20:47.930

Robert Amenn

I can.

1:20:48.400 --> 1:20:53.690

Robert Amenn

I can review the files in in in in one day, so you will not.

1:20:54.160 --> 1:20:58.550

Robert Amenn

You will not have an issue of having them separated from you.

1:20:58.660 --> 1:21:7.110

Robert Amenn

The the thing that we agreed upon and the thing that I would very much like is to be able to see no one else to see the contents of the files on the plaintiff side.

1:21:7.210 --> 1:21:10.620

Robert Amenn

And that I would call out the ones that were in.

1:21:10.20 --> 1:21:16.890

Judge Robert W Lehrburger

But if, but if they, if they don't have the opportunity to see some content, then they don't know whether they have something, a challenge or not.

1:21:17.60 --> 1:21:19.280

Judge Robert W Lehrburger

And whether there's a dispute? No.

1:21:19.860 --> 1:21:20.50

Stein, Wendy R.

And.

1:21:17.970 --> 1:21:27.670

Robert Amenn

Ohh, that is why that was true and that's why we agreed that a third party person would make the the determination they agreed to them.

1:21:27.810 --> 1:21:28.400

Judge Robert W Lehrburger

Hold on.

1:21:26.450 --> 1:21:30.600

Stein, Wendy R.

Your Honor, unfortunately, section Section 7 was never.

1:21:30.610 --> 1:21:39.650

Stein, Wendy R.

If you look even at E CF51-3, the defendant did not have any changes to the conclusion of the inspection a through D, which I just read into the record.

1:21:40.310 --> 1:21:41.800

Judge Robert W Lehrburger

OK, well, I understand.

1:21:41.810 --> 1:21:46.140

Judge Robert W Lehrburger

And he I think he said he then had concerns with other things.

1:21:46.150 --> 1:21:54.730

Judge Robert W Lehrburger

He was and and I see that in the version he had back in January 5th, he had no changes to that agreed.

1:21:54.930 --> 1:22:9.520

Judge Robert W Lehrburger

And I think with the assurance that it's going to be attorneys eyes only so that they can identify disputes that the defendant is sufficiently protecting.

1:22:9.990 --> 1:22:11.420

Judge Robert W Lehrburger

So we're going to leave it as it is.

1:22:14.170 --> 1:22:14.290

Judge Robert W Lehrburger
Yes.

1:22:11.970 --> 1:22:18.420

Robert Amenn

May I call out an object we the the whole purpose of this is the court.

1:22:18.950 --> 1:22:21.660

Robert Amenn

The court ordered us to negotiate.

1:22:21.870 --> 1:22:24.340

Robert Amenn

I negotiated in good faith.

1:22:24.570 --> 1:22:27.20

Robert Amenn

I made concessions to the plaintive.

1:22:27.140 --> 1:22:29.700

Robert Amenn

I received concessions from the plaintiff.

1:22:30.150 --> 1:22:33.820

Robert Amenn

Now those concessions, two of them have been withdrawn.

1:22:34.550 --> 1:22:45.810

Robert Amenn

And I've given up things that I would have not given up if, if I did not give like like if I didn't receive those concessions so.

1:22:45.40 --> 1:22:51.230

Judge Robert W Lehrburger

I I I understand the point and I'm not, but I the the thing here is I'm not resolving what was agreed to or not.

1:22:59.130 --> 1:22:59.910

Robert Amenn

OK, that's fine.

1:22:51.280 --> 1:23:5.350

Judge Robert W Lehrburger

I'm resolving what's going to be done with the protocol because there is disagreement and I'm determining what I find to be sufficiently protective and and fair, and that's the basis for it.

1:23:4.940 --> 1:23:5.790

Stein, Wendy R.

Uh, your honor.

1:23:5.360 --> 1:23:6.170

Judge Robert W Lehrburger

What? Yeah.

1:23:6.40 --> 1:23:8.290

Stein, Wendy R.

Your Honor, I could just clarify the record just because.

1:23:8.520 --> 1:23:27.870

Stein, Wendy R.

So when we have a transcript, it's clear so so that section 6E will be as it appears in EF62-1 with the addition, your Honor, made that if an agreement cannot be reached at the end of E1, we would come to court for resolution.

1:23:27.360 --> 1:23:28.740

Judge Robert W Lehrburger

Current correct.

1:23:28.460 --> 1:23:28.970

Stein, Wendy R.

Thank you.

1:23:29.600 --> 1:23:29.960

Stein, Wendy R.

Thank you.

1:23:33.670 --> 1:23:34.130

Judge Robert W Lehrburger

All right.

1:23:36.990 --> 1:23:50.230

Judge Robert W Lehrburger

Then the there was file deletion and an additional provision that the defendant added that the hard drive would be wiped clean by the consultant.

1:23:50.240 --> 1:23:55.290

Judge Robert W Lehrburger

After the analysis is complete, Miss Don wants the status of that.

1:23:56.600 --> 1:23:57.840

Stein, Wendy R.

I think we have an agreement on that.

1:23:58.430 --> 1:23:59.330

Judge Robert W Lehrburger
OK, great.

1:24:1.20 --> 1:24:5.590

Judge Robert W Lehrburger
Uh, so anything that left because based on what I have here, we've reached in.

1:24:8.640 --> 1:24:14.320

Stein, Wendy R.
I think from our perspective, just the search terms, I believe there is a complete agreement.

1:24:14.750 --> 1:24:24.590

Stein, Wendy R.
There's just one search at row 36 if, if if defendant is not going to agree to that, we can screen share it or otherwise we have an agreed upon list of search terms.

1:24:25.0 --> 1:24:32.230

Robert Amenn
I I'd like to share that document because there there is one thing that I thought we agreed to.

1:24:32.620 --> 1:24:34.130

Robert Amenn
And you withdrew it.

1:24:34.480 --> 1:24:39.490

Robert Amenn
And I wanna make sure that we're because if that's the case, then maybe we don't have an agreement on search terms.

1:24:39.750 --> 1:24:41.530

Judge Robert W Lehrburger
OK, so if you can share it, go ahead.

1:24:50.190 --> 1:24:51.580

Stein, Wendy R.
I believe Maddie is going to share.

1:25:8.600 --> 1:25:14.440

Robert Amenn
First off, there was sections of there was language above that seems to be missing.

1:25:15.380 --> 1:25:16.320

Robert Amenn
Can you go up to the top?

1:25:21.680 --> 1:25:29.470

Robert Amenn
We we agreed in principle umm to language that you have taken out and I need to find.

1:25:31.390 --> 1:25:32.970

Robert Amenn

My what I sent you?

1:25:49.470 --> 1:25:50.120

Robert Amenn

Bear with me.

1:25:50.130 --> 1:25:51.650

Robert Amenn

I'm sorry I have to find that on my computer.

1:25:52.320 --> 1:25:52.840

Judge Robert W Lehrburger

No problem.

1:26:11.850 --> 1:26:17.400

Robert Amenn

So in our in our language you asked me.

1:26:21.810 --> 1:26:24.620

Robert Amenn

We have language above that has been excluded.

1:26:25.20 --> 1:26:30.820

Robert Amenn

All search terms will be searched using exact match and no other type of matching will be allowed.

1:26:31.330 --> 1:26:35.600

Robert Amenn

You have removed that from the document that you're displaying.

1:26:35.870 --> 1:26:38.640

Robert Amenn

We agreed that that was what we were gonna include.

1:26:38.680 --> 1:26:39.230

Judge Robert W Lehrburger

Hold on.

1:26:43.380 --> 1:26:43.750

Stein, Wendy R.

Yeah.

1:26:39.240 --> 1:26:43.990

Judge Robert W Lehrburger

OK, so this Stein is what is it going to be included or is it?

1:26:43.760 --> 1:26:52.360

Stein, Wendy R.

Yes, yes, this this was just a chart that we made showing how much we compromised from the initial terms to the to the terms that are operative.

1:26:52.370 --> 1:26:54.400

Stein, Wendy R.

Now that we're agreeable to that.

1:26:53.160 --> 1:27:1.500

Judge Robert W Lehrburger

Alright, so in other words, the language that Mister Ahmed has just referred to will be included on the search term list, OK.

1:27:1.140 --> 1:27:7.10

Stein, Wendy R.

Yes, it will say all search terms will be searched using exact match and no other type of matching will be allowed.

1:27:7.20 --> 1:27:7.250

Stein, Wendy R.

Where?

1:27:7.260 --> 1:27:8.540

Stein, Wendy R.

We're we do have an agreement on that.

1:27:8.890 --> 1:27:16.460

Judge Robert W Lehrburger

OK, so now let's talk about what's the issue with the the list and can you share that again?

1:27:20.620 --> 1:27:21.260

Stein, Wendy R.

Yes, in honor.

1:27:20.450 --> 1:27:29.570

Robert Amenn

Can can is it possible for you to share the document that we agree to instead of this list that I'd like to work from the document as we agreed to.

1:27:30.510 --> 1:27:33.20

Stein, Wendy R.

But we we just had an agreement on E1.

1:27:33.30 --> 1:27:34.330

Stein, Wendy R.

So there's just really.

1:27:33.900 --> 1:27:34.550

Robert Amenn

No, no, no.

1:27:34.560 --> 1:27:42.650

Robert Amenn

I I would like the document like we agreed to a document and I don't understand why you don't.

1:27:41.640 --> 1:27:42.890

Stein, Wendy R.

You would do that agreement.

1:27:42.670 --> 1:27:43.850

Robert Amenn

You don't wanna show that document.

1:27:41.320 --> 1:27:44.670

Judge Robert W Lehrburger

Do you have business, Miss Stein, Miss Stein?

1:27:46.460 --> 1:27:56.470

Judge Robert W Lehrburger

Do you have a copy of the search terms that has the language on it that he wants and does not show what it was in earlier iterations?

1:27:58.900 --> 1:27:59.510

Stein, Wendy R.

Yes, your honor.

1:27:59.520 --> 1:28:1.540

Stein, Wendy R.

We will locate it and Matt and my colleague Maddie hasn't.

1:28:2.140 --> 1:28:3.350

Judge Robert W Lehrburger

OK, let's get that up.

1:28:16.720 --> 1:28:18.360

Judge Robert W Lehrburger

Is this the document, Mr Annan?

1:28:18.740 --> 1:28:20.110

Robert Amenn

Yes, that looks like the document.

1:28:20.390 --> 1:28:22.540

Judge Robert W Lehrburger

OK, alright.

1:28:22.150 --> 1:28:24.670

Robert Amenn

So there.

1:28:24.920 --> 1:28:27.250

Robert Amenn

So the disagreements and I wanna make sure.

1:28:30.60 --> 1:28:33.960

Robert Amenn

The the base cap had a disagreement on one beat.

1:28:38.320 --> 1:28:39.780

Judge Robert W Lehrburger

1B ohh I see.

1:28:39.640 --> 1:28:39.970

Robert Amenn

Yeah.

1:28:39.980 --> 1:28:43.350

Robert Amenn

They, they they, they said that they like at the time that we were talking.

1:28:43.780 --> 1:28:52.240

Robert Amenn

I recall that they they said that they that the search term would be namespace base cap.

1:28:54.960 --> 1:28:57.840

Judge Robert W Lehrburger

As opposed to just base cap by itself.

1:28:59.920 --> 1:29:0.60

Stein, Wendy R.

But.

1:28:58.440 --> 1:29:13.790

Robert Amenn

Yes, because like like it it's restricting like like the goal is to like with C sharp files when we were like that name space based cap will find all of base caps C files.

1:29:16.340 --> 1:29:16.780

Judge Robert W Lehrburger

Miss Stein.

1:29:18.10 --> 1:29:21.790

Stein, Wendy R.

Yeah, I believe Archer Hall confirmed that that this was acceptable.

1:29:22.680 --> 1:29:23.310

Robert Amenn

OK.

1:29:23.430 --> 1:29:23.870

Robert Amenn
Yeah.

1:29:23.880 --> 1:29:24.290

Robert Amenn
No.

1:29:23.990 --> 1:29:25.540

Stein, Wendy R.
But I I need to have Tom.

1:29:24.340 --> 1:29:27.160

Robert Amenn
So you you you never got back to me on whether you agreed to it or not.

1:29:27.710 --> 1:29:33.560

Stein, Wendy R.
Tom, is that correct that it will capture any source code that defendant may have taken a base caps?

1:29:35.450 --> 1:29:41.400

Tom Plunkett
It's it should umm, assuming it was all written properly and spelled exactly the same, yes.

1:29:45.80 --> 1:29:45.310

Judge Robert W Lehrburger
OK.

1:29:45.320 --> 1:29:46.550

Judge Robert W Lehrburger
So, Miss Stein, you're good with that.

1:29:49.850 --> 1:29:56.860

Stein, Wendy R.
That, Tom, do you think that a different if if a misspelling was made then it will not capture our information?

1:29:56.820 --> 1:30:1.110

Robert Amenn
It's it's Orchard Hall, a neutral party, or is an Archer Hall giving advice to the plaintiff.

1:30:1.990 --> 1:30:3.60

Judge Robert W Lehrburger
Neither did they.

1:30:3.70 --> 1:30:4.300

Judge Robert W Lehrburger
I'm sorry, not the latter.

1:30:4.310 --> 1:30:5.250

Judge Robert W Lehrburger

They are neutral.

1:30:5.260 --> 1:30:18.200

Judge Robert W Lehrburger

They are helping determine what will be captured or not captured and so they provided an accurate answer and it's frankly something I was wondering about.

1:30:18.210 --> 1:30:19.770

Judge Robert W Lehrburger

What happens if there's a misspelling?

1:30:20.580 --> 1:30:24.350

Judge Robert W Lehrburger

Umm, so uh, I think Miss Stein.

1:30:24.360 --> 1:30:25.320

Judge Robert W Lehrburger

What was your question?

1:30:25.330 --> 1:30:29.770

Judge Robert W Lehrburger

Again it so well you were confirming that misspelling would not be captured.

1:30:30.40 --> 1:30:39.160

Judge Robert W Lehrburger

I have no idea what you know the likelihood of that is, but is there a something that would address that short of just base camp?

1:30:40.560 --> 1:30:43.260

Stein, Wendy R.

And that's a technical question for Mr Plunkett.

1:30:43.270 --> 1:30:43.920

Stein, Wendy R.

I I'm not sure.

1:30:43.740 --> 1:30:54.690

Tom Plunkett

But the the types of typos that I I would I would expect could happen or release the the space between namespace and base cap.

1:30:57.190 --> 1:30:58.60

Judge Robert W Lehrburger

OK, alright.

1:30:54.740 --> 1:30:58.520

Tom Plunkett

So if there's two spaces, for instance, or have.

1:30:58.70 --> 1:31:2.70

Judge Robert W Lehrburger

So that can be certain that can be accommodated by searching for something like that, right?

1:31:2.520 --> 1:31:3.50

Tom Plunkett

Yes it can.

1:31:3.740 --> 1:31:4.80

Judge Robert W Lehrburger

OK.

1:31:4.780 --> 1:31:14.630

Robert Amenn

Will it be as an additional search term, because the the the protocol as agreed upon are exact matches only?

1:31:15.160 --> 1:31:16.970

Robert Amenn

So how will you search for two spaces?

1:31:16.980 --> 1:31:20.780

Robert Amenn

You have another search term that says name, space, space, space, space cap.

1:31:21.750 --> 1:31:35.50

Tom Plunkett

I think one thing we might want to consider here is what we call a proximity search, which would be, umm namespace within a certain number of characters, let's say 3 characters of base cap.

1:31:35.180 --> 1:31:39.990

Tom Plunkett

I I would expect those would be on the same line and that would be everything that's on that line.

1:31:41.70 --> 1:31:45.320

Tom Plunkett

I'm and that that covers most conditions.

1:31:45.330 --> 1:31:48.970

Tom Plunkett

Where were those items would be together and that namespace line.

1:31:54.460 --> 1:31:55.140

Judge Robert W Lehrburger

Not well.

1:31:49.590 --> 1:31:55.880

Robert Amenn

A proximity search would end our up end our entire agreement, because I specifically reviewed.

1:31:55.150 --> 1:31:56.290

Judge Robert W Lehrburger

Hold on, Mr Ohman.

1:31:56.390 --> 1:31:56.660

Tom Plunkett

But.

1:31:56.340 --> 1:32:12.190

Judge Robert W Lehrburger

Mr Ahmed, before you go to that conclusion, just concentrate and focus on this specific solution that he's suggesting, which is just to capture a couple extra spaces between the name and base cap.

1:32:12.200 --> 1:32:15.110

Judge Robert W Lehrburger

Why would that be so?

1:32:15.150 --> 1:32:20.440

Judge Robert W Lehrburger

How would that be so much more inclusive than just picking up a situation where there's an extra space?

1:32:21.270 --> 1:32:26.840

Robert Amenn

So the proximity search, if it's restricted to this item, I'm fine with it.

1:32:27.640 --> 1:32:27.800

Tom Plunkett

Yeah.

1:32:26.930 --> 1:32:28.70

Judge Robert W Lehrburger

Yeah, that's what we're talking about.

1:32:28.330 --> 1:32:29.140

Robert Amenn

OK, that's fine.

1:32:29.250 --> 1:32:33.220

Robert Amenn

If it's, if the proximity search is like like special.

1:32:32.540 --> 1:32:39.430

Judge Robert W Lehrburger

No, we're just talking about for this item 1B and for the name namespace issue.

1:32:39.580 --> 1:32:41.390

Judge Robert W Lehrburger
So that's gonna be within.

1:32:41.440 --> 1:32:42.760

Judge Robert W Lehrburger
That's gonna be a proximity.

1:32:43.460 --> 1:32:48.80

Judge Robert W Lehrburger
Uh factor of 3/3 within three spaces.

1:32:48.450 --> 1:32:49.430

Judge Robert W Lehrburger
Name space.

1:32:50.90 --> 1:32:55.100

Judge Robert W Lehrburger
Uh, then base cap and the point is the space can be 1, two or three spaces.

1:32:55.990 --> 1:32:59.680

Robert Amenn
That's fine if it's restricted to three spaces, and if it could be documented that way.

1:32:59.790 --> 1:33:4.310

Robert Amenn
Are there any other permutations that you wanna deal with for this this search term?

1:33:4.180 --> 1:33:4.510

Tom Plunkett
Umm.

1:33:4.880 --> 1:33:9.300

Tom Plunkett
A potentially a tab I would prefer for to say within any 3 characters.

1:33:10.80 --> 1:33:11.150

Judge Robert W Lehrburger
3 characters.

1:33:11.240 --> 1:33:12.150

Tom Plunkett
3 characters, yeah.

1:33:11.580 --> 1:33:13.20

Judge Robert W Lehrburger
OK, OK.

1:33:14.380 --> 1:33:15.920

Judge Robert W Lehrburger
Sounds fine, Mr Rahman.

1:33:18.400 --> 1:33:21.650

Robert Amenn
I'm trying to think of this would like 3 characters.

1:33:21.660 --> 1:33:22.690

Robert Amenn
No, I don't have a problem with the.

1:33:23.230 --> 1:33:23.620

Judge Robert W Lehrburger
Great.

1:33:24.250 --> 1:33:24.500

Stein, Wendy R.
Umm.

1:33:24.10 --> 1:33:26.80

Judge Robert W Lehrburger
OK, then it'll be within 3 characters.

1:33:26.170 --> 1:33:26.840

Judge Robert W Lehrburger
Yes, Miss Stein.

1:33:27.310 --> 1:33:28.620

Stein, Wendy R.
Just to see clarification.

1:33:28.630 --> 1:33:34.700

Stein, Wendy R.
So I just wanna clarify that this was a document that the defendant withdrew when he we didn't agree to other things.

1:33:34.710 --> 1:33:44.890

Stein, Wendy R.
So we just want to state for the record that what's in the additional comments in section one and seven no longer governs what we just agreed to and E1 would govern.

1:33:45.0 --> 1:33:48.710

Stein, Wendy R.
And so we're just talking about the actual terms that are gonna be searched now.

1:33:49.990 --> 1:33:50.260

Judge Robert W Lehrburger
Yes.

1:33:50.200 --> 1:33:50.870

Robert Amenn

I don't follow.

1:33:50.880 --> 1:33:51.420

Robert Amenn

Can you explain?

1:33:52.490 --> 1:33:52.770

Stein, Wendy R.

Yes.

1:33:52.770 --> 1:33:56.240

Stein, Wendy R.

So the only term that issue from our perspective is 36.

1:33:56.300 --> 1:33:58.480

Stein, Wendy R.

So I don't know if Mattie can Scroll down to 36.

1:33:58.490 --> 1:34:6.420

Stein, Wendy R.

The only actual term that the parties or or maybe defendant agrees to and just I'm not aware is the 36.

1:34:6.890 --> 1:34:10.330

Stein, Wendy R.

There were four different searches and he wanted those to be separated.

1:34:10.940 --> 1:34:11.860

Robert Amenn

And we agreed to that.

1:34:12.400 --> 1:34:12.770

Judge Robert W Lehrburger

OK.

1:34:12.810 --> 1:34:21.90

Judge Robert W Lehrburger

And when you say, OK, so when you say separated meaning just as independent searches without the use of war.

1:34:21.780 --> 1:34:22.170

Stein, Wendy R.

Yes.

1:34:22.110 --> 1:34:22.250

Robert Amenn

Yes.

1:34:22.180 --> 1:34:33.490

Stein, Wendy R.

So they'll just be 4 independent searches, but just to to clarify the record we're we're no longer doing third party review on one and seven because we've now reached an agreement on E1.

1:34:33.500 --> 1:34:37.440

Stein, Wendy R.

So that's going to be taken out of the search term list that we're going to include as an exhibit to the protocol.

1:34:41.180 --> 1:34:42.70

Robert Amenn

One and seven.

1:34:46.890 --> 1:34:48.80

Stein, Wendy R.

There, there were.

1:34:48.470 --> 1:34:51.680

Stein, Wendy R.

All we're saying is there's no additional there's.

1:34:51.790 --> 1:35:0.90

Stein, Wendy R.

We've agreed now on the procedure in Section 6 and seven, so these comments that were additional comments are no longer applicable, just yeah.

1:34:58.560 --> 1:35:0.240

Judge Robert W Lehrburger

They don't correct.

1:35:0.440 --> 1:35:2.720

Robert Amenn

So so I I do have a question, your Honor.

1:35:4.180 --> 1:35:38.420

Robert Amenn

The the the base cap and I'm I'm not making any accusations right now, but peace cap, I've been talking to other people that have that have similar situations that myself at base camp and there's a commonality of of of treatment and there's other other people are seeking legal redress with base cap based on their base caps actions we have been communicating.

1:35:40.200 --> 1:36:8.480

Robert Amenn

If if base CAP is searched and there's no third party, review the communication between us will be discovered by base caps plaintiff and then Basecamp will have information about future cases that may, may, may be taken against base cap and the third party review was specifically there to support that base camp like no.

1:36:10.130 --> 1:36:12.120

Robert Amenn

Cook shoot information.

1:36:12.130 --> 1:36:13.620

Robert Amenn

Base CAP would get advanced knowledge of.

1:36:17.920 --> 1:36:19.970

Robert Amenn

Does that make sense like this?

1:36:19.370 --> 1:36:20.290

Judge Robert W Lehrburger

I understand you're.

1:36:26.100 --> 1:36:26.480

Robert Amenn

So so.

1:36:20.510 --> 1:36:28.300

Judge Robert W Lehrburger

I'm I understand your concern, but I'm as I was just hearing that one in seven.

1:36:29.980 --> 1:36:31.350

Judge Robert W Lehrburger

You miss Stein.

1:36:31.360 --> 1:36:32.710

Judge Robert W Lehrburger

You said those are no longer issues.

1:36:32.720 --> 1:36:37.690

Judge Robert W Lehrburger

Were you saying that search terms are out in one in seven or just the comments?

1:36:41.880 --> 1:36:42.80

Judge Robert W Lehrburger

Would.

1:36:38.520 --> 1:36:44.980

Stein, Wendy R.

Just the comments this this was comments that we had and then he later withdrew and those are not applicable anymore so.

1:36:44.910 --> 1:36:45.300

Judge Robert W Lehrburger

OK.

1:36:45.620 --> 1:36:48.40

Judge Robert W Lehrburger

And what about his concern that he just raised?

1:36:48.190 --> 1:36:57.530

Judge Robert W Lehrburger

Because that is, uh discussion of something that does not involve uh, confidential information that he may have taken necessarily.

1:36:57.540 --> 1:36:58.400

Judge Robert W Lehrburger

And I suppose it could.

1:36:58.410 --> 1:37:14.670

Judge Robert W Lehrburger

But he he's talking about communications with third parties that might implicate certain strategies and intent or concerns regarding base cap that you prefer, you know see.

1:37:16.20 --> 1:37:17.890

Peerce, Marjorie

Your Honor, this is Margie Pierce.

1:37:17.980 --> 1:37:27.670

Peerce, Marjorie

UM and the answer is that this will be subject to attorneys claws on attorneys eyes only, and then the courts review.

1:37:28.220 --> 1:37:29.90

Peerce, Marjorie

If we don't agree.

1:37:29.870 --> 1:37:34.80

Robert Amenn

But the same attorneys potentially could be defending base cap.

1:37:34.150 --> 1:37:40.700

Robert Amenn

The attorneys can advise base cap like for example, there's communication between and.

1:37:40.710 --> 1:37:42.20

Robert Amenn

I'll give you this as an example.

1:37:42.30 --> 1:37:47.660

Robert Amenn

Communication between a former employee before she was former employee where Base Gap?

1:37:47.670 --> 1:37:55.940

Robert Amenn

Asked her to change her address, even though they knew that she was not living at that address to to Umm.

1:37:58.160 --> 1:38:9.90

Robert Amenn

To avoid like problems with respect to taxes, and that information will require a discovery.

1:38:9.520 --> 1:38:21.740

Robert Amenn

And if base CAP is aware of that, they may be able to delete the chats where they they told that person that information and they will potentially delete the emails that that information is so it would ruin discovery.

1:38:23.410 --> 1:38:29.320

Judge Robert W Lehrburger

No, you're assuming that they would delete, in which case they might be in violation of certain requirements.

1:38:29.330 --> 1:38:34.270

Judge Robert W Lehrburger

But Miss Diane, can you speak to it or whoever was speaking to it, his peers?

1:38:37.710 --> 1:38:37.950

Judge Robert W Lehrburger

OK.

1:38:34.820 --> 1:38:38.490

Peerce, Marjorie

Your, your Honor, Miss Stein and I are in the same room because we're actually away.

1:38:38.700 --> 1:38:39.910

Peerce, Marjorie

So there's there's.

1:38:40.200 --> 1:38:41.550

Peerce, Marjorie

That's why you're here in Echo.

1:38:41.560 --> 1:38:42.740

Peerce, Marjorie

So I apologize for that.

1:38:42.700 --> 1:38:42.880

Judge Robert W Lehrburger

Not.

1:38:44.160 --> 1:38:50.130

Peerce, Marjorie

So first one on litigation hold, so and we're lawyers and we're not gonna delete anything.

1:38:50.440 --> 1:39:2.50

Peerce, Marjorie

And your Honor already addressed the fact that this would be attorneys eyes only and we are not going to disclose to our client things that we are not allowed to as attorneys.

1:39:2.500 --> 1:39:5.120

Peerce, Marjorie

And if there's a dispute, it'll come to the court.

1:39:8.220 --> 1:39:8.640

Robert Amenn

Umm.

1:39:8.980 --> 1:39:18.900

Robert Amenn

I sort of understand that, but all of this could be easily avoided if I can look at the material ahead of time.

1:39:19.670 --> 1:39:29.90

Robert Amenn

You don't have to have the the attorney like you're you're basically the whole purpose of one of the purposes of you, like you wanting to get your files back.

1:39:29.990 --> 1:39:32.580

Robert Amenn

I find it hard to believe that you're doing all this.

1:39:33.250 --> 1:39:36.520

Robert Amenn

I have legitimate suits against you on IP.

1:39:36.630 --> 1:39:38.100

Robert Amenn

I've legitimate suits against you.

1:39:38.110 --> 1:39:41.220

Robert Amenn

On contract breach, I have legitimate suits about you.

1:39:41.260 --> 1:39:50.350

Robert Amenn

You on harassment now you're going to look at all my emails and you're going to find information that's gonna benefit your client.

1:39:50.940 --> 1:39:55.550

Robert Amenn

I'm not saying that you will turn it over to them, but I don't wanna run that risk.

1:39:55.620 --> 1:40:3.510

Robert Amenn

I don't want the risk of my case and my like protect like my case beats be spoiled.

1:40:3.940 --> 1:40:5.350

Robert Amenn

Put in and trust of your hands.

1:40:5.360 --> 1:40:12.770

Robert Amenn

I I I I I I I I don't I'm not saying that you don't have integrity and I'm not saying that you would do it but there's constant mistakes.

1:40:17.0 --> 1:40:18.70

Judge Robert W Lehrburger

Alright, Mr Ohman.

1:40:13.20 --> 1:40:18.410

Robert Amenn

People's there's there's, like, there's like a ship.

1:40:18.80 --> 1:40:20.470

Judge Robert W Lehrburger

You're I I you're concern is.

1:40:20.530 --> 1:40:23.640

Judge Robert W Lehrburger

I hear your concern and and I understand it and it makes sense.

1:40:24.210 --> 1:40:37.820

Judge Robert W Lehrburger

Ohm and I there is something about, you know, outside counsel seeing things of that nature could easily lead to.

1:40:37.880 --> 1:40:38.50

Judge Robert W Lehrburger

You.

1:40:41.610 --> 1:41:1.370

Judge Robert W Lehrburger

I don't know it advice or strategy or things that might not otherwise happen if they hadn't seen it, not because they'd be doing anything improper, but just because they would know things that would enable them to act or advise in a way that ohm might raise concerns.

1:41:1.380 --> 1:41:15.880

Judge Robert W Lehrburger

And I understand that that that concern UM at the same time we can't just put in Mr Rahman's hand the decision of which documents get turned over in debt.

1:41:16.10 --> 1:41:27.670

Judge Robert W Lehrburger

So let me ask Miss Pierce and uh whether you have any thoughts on how that can, how we can ameliorate both sides concerns on that?

1:41:30.630 --> 1:41:31.30

Robert Amenn

You.

1:41:30.300 --> 1:41:35.610

Stein, Wendy R.

Yes, I believe that emails with third party former employees.

1:41:35.620 --> 1:41:41.10

Stein, Wendy R.

So I believe he's talking about someone named Sharon and he.

1:41:40.160 --> 1:41:41.60

Judge Robert W Lehrburger

Well, whoever it is.

1:41:41.480 --> 1:41:42.290

Stein, Wendy R.

Yeah, he could.

1:41:42.360 --> 1:42:4.110

Stein, Wendy R.

We would agree that he could, like when when both sides get the list of emails and the emails if he give us a list of emails of the third party former employees that he's speaking with those we would be agreeable to him reviewing first because there's just an isolated number of people and we also object and don't agree with any of his characterizations of our client today.

1:42:4.760 --> 1:42:6.390

Judge Robert W Lehrburger

OK, so so so hold on.

1:42:5.480 --> 1:42:7.340

Peerce, Marjorie

Or or of us, honestly.

1:42:6.400 --> 1:42:7.980

Judge Robert W Lehrburger

So, OK, OK.

1:42:7.990 --> 1:42:8.360

Judge Robert W Lehrburger

No ones.

1:42:8.160 --> 1:42:8.700

Robert Amenn

I wasn't.

1:42:8.780 --> 1:42:9.730

Robert Amenn

I didn't anyway miss.

1:42:8.650 --> 1:42:10.50

Judge Robert W Lehrburger

He's he?

1:42:9.740 --> 1:42:10.120

Robert Amenn

Miss, miss.

1:42:10.140 --> 1:42:10.750

Judge Robert W Lehrburger

Yeah.

1:42:11.180 --> 1:42:12.530

Judge Robert W Lehrburger

I take it totally.

1:42:11.670 --> 1:42:12.670

Robert Amenn

Say anything bad about you?

1:42:13.20 --> 1:42:14.490

Judge Robert W Lehrburger

I take it totally neutrally.

1:42:14.900 --> 1:42:23.740

Judge Robert W Lehrburger

These are all valid concerns and I thought he was expressing himself actually very uh, neutral.

1:42:24.280 --> 1:42:35.20

Judge Robert W Lehrburger

Uh, this could have characterized it, in which, uh, different ways and where he was advocating or using certain words.

1:42:35.910 --> 1:42:38.680

Judge Robert W Lehrburger

I they don't influence the court.

1:42:39.300 --> 1:42:48.30

Judge Robert W Lehrburger

Umm, so the idea would be then he would have an opportunity to first look at the material.

1:42:48.40 --> 1:42:54.830

Judge Robert W Lehrburger

So he can take out those emails or bring them to your attention and say those are the ones that I'm taking out.

1:42:55.120 --> 1:42:56.960

Judge Robert W Lehrburger

Is that the Idms time?

1:42:57.350 --> 1:43:7.600

Stein, Wendy R.

Umm, so I think what we could do is put in to E1 where it says both sides will receive the list of files and other data including but not limited to emails.

1:43:7.890 --> 1:43:20.570

Stein, Wendy R.

We could just draw clause like a comma, except that emails with former based CAP employees named and he's going to have to name them, will be reviewed by him first.

1:43:20.580 --> 1:43:21.190

Stein, Wendy R.

Something like that.

1:43:23.680 --> 1:43:25.840

Judge Robert W Lehrburger

Well, yeah, go ahead and explore it.

1:43:23.280 --> 1:43:27.20

Robert Amenn

Just 22 point I'd like to make that one is.

1:43:26.220 --> 1:43:28.590

Stein, Wendy R.

Because can I just say one other thing that before?

1:43:28.980 --> 1:43:29.160

Judge Robert W Lehrburger

Yeah.

1:43:28.640 --> 1:43:43.470

Stein, Wendy R.

Because, your Honor, another another, another issue we have is he could claim that a former employee is off limits and we shouldn't see emails with them because they're, you know, gonna be in litigation with us when really they're transferring our confidential information.

1:43:43.480 --> 1:43:43.830

Judge Robert W Lehrburger

Right.

1:43:43.840 --> 1:43:48.290

Judge Robert W Lehrburger

No, I I understand that that could be, you know that crossed my mind as well.

1:43:48.300 --> 1:43:49.610

Judge Robert W Lehrburger

That could certainly happen.

1:43:49.760 --> 1:43:51.830

Judge Robert W Lehrburger

Not necessarily that he did so, but it could happen.

1:43:51.840 --> 1:43:55.590

Judge Robert W Lehrburger

And you have to be aware of that, UM and.

1:43:54.990 --> 1:43:58.980

Stein, Wendy R.

And so we would propose that they be submitted, perhaps in camera, to your Honor.

1:43:58.990 --> 1:44:0.160

Stein, Wendy R.

If they were a large volume.

1:43:58.710 --> 1:44:0.460

Judge Robert W Lehrburger

Yes, that's exactly.

1:44:0.580 --> 1:44:2.540

Judge Robert W Lehrburger

That's exactly what I was about to say.

1:44:2.770 --> 1:44:3.10

Stein, Wendy R.

OK.

1:44:2.870 --> 1:44:21.740

Judge Robert W Lehrburger

That any such documents that the defendant believes should not be produced because they are communications with other or former employees, base cap and don't implicate the information at issue here.

1:44:21.850 --> 1:44:30.920

Judge Robert W Lehrburger

Then those documents need to be submitted to me for review, and I'll make a determination as to whether they should be produced, if at all.

1:44:31.50 --> 1:44:31.510

Judge Robert W Lehrburger
And don't.

1:44:32.930 --> 1:44:33.380

Robert Amenn
So.

1:44:33.390 --> 1:44:35.740

Robert Amenn
So there's there's two points of clarification.

1:44:35.360 --> 1:44:36.420

Judge Robert W Lehrburger
Yeah, go ahead.

1:44:41.120 --> 1:44:41.710

Judge Robert W Lehrburger
You. You.

1:44:36.150 --> 1:44:42.980

Robert Amenn
One is that means I have to submit a list of people or or could I just declare it like?

1:44:42.990 --> 1:44:45.860

Robert Amenn
Do I get to look at, like, speak?

1:44:45.930 --> 1:44:50.710

Robert Amenn
We solved this problem with allowing me to look at things first and maybe.

1:44:50.270 --> 1:44:52.800

Judge Robert W Lehrburger
This is this is this is what we're doing.

1:44:53.130 --> 1:45:21.880

Judge Robert W Lehrburger
You are gonna have an opportunity to look at the materials 1st to take out or set aside and identify the communications with other base camp employees, former base camp employees that you think should be off limits and any of those you are going to submit to me to review and make it a termination on whether they are properly withheld or or not.

1:45:22.460 --> 1:45:33.160

Judge Robert W Lehrburger
And that's called in camera review, so that a third party is reviewing those and to put a finer point on this steines.

1:45:34.90 --> 1:45:34.600

Judge Robert W Lehrburger
Uh.

1:45:34.950 --> 1:45:41.890

Judge Robert W Lehrburger
Recommended suggestion where you said there was this exception in which he will have the opportunity to look at it first.

1:45:41.900 --> 1:45:47.530

Judge Robert W Lehrburger
I mean, he needs an opportunity to conduct a full review first in order to locate such documents, right?

1:45:49.240 --> 1:45:54.230

Stein, Wendy R.
Yes, he and in Section 7 he does get the relativity access to the documents.

1:45:54.300 --> 1:45:55.530

Judge Robert W Lehrburger
No, but I just mean that.

1:45:55.540 --> 1:46:8.450

Judge Robert W Lehrburger
So you'd have to rewrite the provision in a way that says you don't get to look at anything until that time period expires, where he has looked set aside and submitted for in camera view.

1:46:8.500 --> 1:46:9.840

Judge Robert W Lehrburger
And I've made a determination.

1:46:10.650 --> 1:46:11.580

Stein, Wendy R.
Well, do so.

1:46:11.590 --> 1:46:12.590

Stein, Wendy R.
I'm in E1.

1:46:12.590 --> 1:46:24.100

Stein, Wendy R.
Just because it'll be easier to write it out like if where it says both sides will receive the list of files and other data, but not limited to, you know, and then it says the list comma.

1:46:24.150 --> 1:46:40.120

Stein, Wendy R.
Then we would put a comma, except that any emails with former base cap employees identified by defendant on should we put a date today?

1:46:43.260 --> 1:46:43.600

Robert Amenn

Uh.

1:46:42.200 --> 1:46:52.430

Stein, Wendy R.

On January 25th will be accessible first to defendant only and to the court.

1:46:53.490 --> 1:46:53.720

Stein, Wendy R.

Uh.

1:46:55.20 --> 1:47:5.520

Stein, Wendy R.

If Defendant believes any such emails should be inaccessible to basically something like that.

1:47:6.630 --> 1:47:12.70

Judge Robert W Lehrburger

Well, as long as you its language that accomplishes that, he gets to review them first.

1:47:13.670 --> 1:47:14.180

Judge Robert W Lehrburger

So.

1:47:14.250 --> 1:47:24.300

Judge Robert W Lehrburger

So he gets to review material first to make determination if there are such emails and decide if there are any that he believes should be submitted to the court for review.

1:47:24.660 --> 1:47:26.310

Stein, Wendy R.

Yes, it just emails with those people.

1:47:24.450 --> 1:47:28.410

Judge Robert W Lehrburger

So we're not, we're not well, yes.

1:47:28.880 --> 1:47:29.110

Stein, Wendy R.

OK.

1:47:28.790 --> 1:47:33.110

Judge Robert W Lehrburger

But again, just we're not going to decide on the exact language on that right now.

1:47:33.850 --> 1:47:34.90

Stein, Wendy R.

OK.

1:47:34.80 --> 1:47:37.230

Judge Robert W Lehrburger

Uh, you're going to have to wordsmith you.

1:47:37.240 --> 1:47:59.570

Judge Robert W Lehrburger

And Mr I'll give you and Mr Amen a certain period of time to nail down the final language of the protocol and uh, any remaining issues you'll submit to me with a a a draft with any red lines that were main.

1:48:0.520 --> 1:48:14.390

Judge Robert W Lehrburger

And I will make a decision and issued the OR let the parties know what the final version is and this should be done relatively quickly.

1:48:14.400 --> 1:48:19.580

Judge Robert W Lehrburger

So I will give you a week in order to finalize the.

1:48:22.150 --> 1:48:31.520

Judge Robert W Lehrburger

Uh, the protocol based on the rulings today and then submit it to me again with uh.

1:48:31.860 --> 1:48:36.410

Judge Robert W Lehrburger

I guess any red lining of anything that's in dispute?

1:48:38.660 --> 1:48:40.10

Robert Amenn

Point of clarification, your honor.

1:48:40.560 --> 1:48:40.680

Judge Robert W Lehrburger

Yes.

1:48:41.580 --> 1:48:50.500

Robert Amenn

One is do I am I required to give a list of people that these emails would be excluded or can I just review all emails because?

1:48:50.140 --> 1:48:51.20

Judge Robert W Lehrburger

You can just.

1:48:51.90 --> 1:48:51.560

Judge Robert W Lehrburger

You can.

1:48:51.670 --> 1:48:52.920

Judge Robert W Lehrburger
Yeah, I miss Stein.

1:48:52.930 --> 1:48:55.580

Judge Robert W Lehrburger
It was not my thought that he has to provide a list.

1:48:56.660 --> 1:49:4.870

Judge Robert W Lehrburger
He he he can review the email, he will provide them for in camera and we'll go from there.

1:49:7.290 --> 1:49:8.180

Robert Amenn
Excellent.

1:49:8.250 --> 1:49:9.120

Robert Amenn
All right, now.

1:49:8.480 --> 1:49:9.210

Stein, Wendy R.
I'm sorry.

1:49:9.440 --> 1:49:9.910

Judge Robert W Lehrburger
Hold on.

1:49:9.920 --> 1:49:10.290

Judge Robert W Lehrburger
Hold on.

1:49:10.300 --> 1:49:10.540

Judge Robert W Lehrburger
Hold on.

1:49:9.280 --> 1:49:11.130

Stein, Wendy R.
I'm sorry, I missed you for a moment.

1:49:11.140 --> 1:49:12.190

Stein, Wendy R.
I couldn't hear what you said.

1:49:11.520 --> 1:49:12.370

Judge Robert W Lehrburger
Yeah.

1:49:12.440 --> 1:49:12.660

Judge Robert W Lehrburger
Yeah.

1:49:12.360 --> 1:49:12.680

Stein, Wendy R.
I'm sorry.

1:49:12.670 --> 1:49:18.510

Judge Robert W Lehrburger
I was just saying, yeah, he gets to review he he doesn't have to provide a list of people in advance.

1:49:18.720 --> 1:49:30.470

Judge Robert W Lehrburger
He will have to provide the emails that he thinks are off limits and he'll have to submit those to the court, but he shouldn't have to in advance.

1:49:30.480 --> 1:49:41.650

Judge Robert W Lehrburger
Just give a list and say here are you know four people that I have in mind and then you go and investigate those four people and it just it he should have the opportunity.

1:49:41.960 --> 1:49:44.860

Judge Robert W Lehrburger
I I don't understand why he would need to provide a list in advance.

1:49:45.660 --> 1:49:52.390

Stein, Wendy R.
So I just don't understand how that works then with E1 so he gets just the emails or he gets all emails before we get them.

1:49:54.110 --> 1:49:56.920

Judge Robert W Lehrburger
He gets to look at them first.

1:49:58.860 --> 1:49:59.280

Judge Robert W Lehrburger
Why not?

1:50:0.730 --> 1:50:1.270

Judge Robert W Lehrburger
What's wrong with that?

1:50:2.100 --> 1:50:6.340

Stein, Wendy R.
So he he gets to look at them for the 1st 14 so we get everything else and then.

1:50:7.280 --> 1:50:7.710

Judge Robert W Lehrburger
No, no.

1:50:7.720 --> 1:50:8.10

Judge Robert W Lehrburger
So.

1:50:8.20 --> 1:50:8.810

Judge Robert W Lehrburger
So he gets.

1:50:8.900 --> 1:50:10.150

Judge Robert W Lehrburger
Yeah, you get everything else.

1:50:10.200 --> 1:50:26.230

Judge Robert W Lehrburger
He gets to look through the emails for a certain period of time, pull the ones that he thinks are communications with former base camp employees that are of concern, and then if he says those shouldn't be produced, then he's going to have to go through me.

1:50:27.0 --> 1:50:27.310

Stein, Wendy R.
OK.

1:50:27.320 --> 1:50:31.120

Stein, Wendy R.
But, your honor, he said he could look at them in a day, and I just want to. Yeah.

1:50:29.780 --> 1:50:31.370

Judge Robert W Lehrburger
Oh, no, I I we're not gonna wait.

1:50:31.380 --> 1:50:32.970

Judge Robert W Lehrburger
This is not gonna be extended.

1:50:34.70 --> 1:50:35.100

Stein, Wendy R.
So how long would he have?

1:50:33.220 --> 1:50:36.400

Judge Robert W Lehrburger
This is going to be, yeah, he'll have three days.

1:50:37.490 --> 1:50:41.80

Stein, Wendy R.
He will have three days, OK, because we've waited a long time to get our.

1:50:41.130 --> 1:50:44.310

Stein, Wendy R.

We were supposed to get our information back in July, so it's been six months.

1:50:43.460 --> 1:50:45.610

Judge Robert W Lehrburger

I I I I I understand.

1:50:46.60 --> 1:50:47.250

Judge Robert W Lehrburger

We're not gonna drag things out.

1:50:47.950 --> 1:51:2.280

Robert Amenn

So, so a couple points of clarification on it, because I I'm I don't know who like if I email my wife and there's discussion of strategy on the case, that would also be an email that I could put for in camera review.

1:51:2.350 --> 1:51:5.230

Robert Amenn

I can pick any email that I think would would like.

1:51:4.560 --> 1:51:5.710

Judge Robert W Lehrburger

No, you you.

1:51:5.770 --> 1:51:8.390

Judge Robert W Lehrburger

Well, I'm not saying you can pick any email right now.

1:51:8.400 --> 1:51:12.710

Judge Robert W Lehrburger

We're talking about communications with former employees.

1:51:12.900 --> 1:51:22.910

Judge Robert W Lehrburger

If there is something, yeah, that you think is legal advice or something of that nature, then you can put that aside.

1:51:23.40 --> 1:51:27.140

Judge Robert W Lehrburger

But there shouldn't be much of anything.

1:51:28.440 --> 1:51:28.700

Robert Amenn

What?

1:51:39.380 --> 1:51:39.850

Judge Robert W Lehrburger
Right.

1:51:29.630 --> 1:51:42.0

Robert Amenn

Uh, OK, I I just want to make sure that no information about my strategies on the the cases that I will be bringing when I get to get to go back to work.

1:51:40.300 --> 1:51:43.210

Judge Robert W Lehrburger
Well, I understood well, it depends.

1:51:42.210 --> 1:51:43.280

Robert Amenn

Yeah, it's.

1:51:43.220 --> 1:51:43.850

Judge Robert W Lehrburger
It depends.

1:51:48.370 --> 1:51:49.60

Robert Amenn

Yeah. Yep.

1:51:43.860 --> 1:51:58.50

Judge Robert W Lehrburger

There may be communications in there that implicate the issues and items in the screens and also have that, but I think it's appropriate for you to have the chance to identify those and to submit them to the court.

1:51:58.820 --> 1:51:59.410

Robert Amenn

Excellent.

1:51:59.480 --> 1:52:0.790

Robert Amenn

So this this this is fine.

1:52:1.20 --> 1:52:6.790

Robert Amenn

Then I would like to different go back to a different topic.

1:52:6.860 --> 1:52:10.910

Robert Amenn

Could we use the same in camera review for all information that's found?

1:52:11.530 --> 1:52:11.730

Judge Robert W Lehrburger
No.

1:52:11.800 --> 1:52:12.750

Robert Amenn
And I would review it.

1:52:15.810 --> 1:52:15.970

Judge Robert W Lehrburger
No.

1:52:16.150 --> 1:52:17.870

Robert Amenn
OK, that's fine.

1:52:18.220 --> 1:52:19.350

Judge Robert W Lehrburger
That's what we are about.

1:52:18.0 --> 1:52:21.470

Robert Amenn
I I that's OK.

1:52:21.520 --> 1:52:21.950

Robert Amenn
Thank you.

1:52:20.20 --> 1:52:22.830

Judge Robert W Lehrburger
OK, I I OK. Alright.

1:52:22.20 --> 1:52:24.630

Robert Amenn
I had to ask because I'd I'd like to protect my information.

1:52:23.880 --> 1:52:24.770

Judge Robert W Lehrburger
Oh, no, there's nothing.

1:52:24.780 --> 1:52:26.210

Judge Robert W Lehrburger
There's nothing wrong with asking.

1:52:26.600 --> 1:52:27.780

Judge Robert W Lehrburger
You're entitled to do that.

1:52:28.760 --> 1:52:33.350

Judge Robert W Lehrburger

Alright, I need to wrap things up because I have a 130 conference.

1:52:33.360 --> 1:52:35.980

Judge Robert W Lehrburger

So is there anything left, Miss Stein?

1:52:37.530 --> 1:52:39.180

Stein, Wendy R.

Uh, just a procedural issue.

1:52:45.130 --> 1:52:45.250

Judge Robert W Lehrburger

Yes.

1:52:39.190 --> 1:52:46.190

Stein, Wendy R.

Uh, are we permitted to file under seal the search terms because they have base cap client names and other client information?

1:52:46.200 --> 1:52:46.700

Stein, Wendy R.

Thank you.

1:52:46.790 --> 1:52:47.420

Stein, Wendy R.

Thank you.

1:52:47.510 --> 1:52:47.900

Stein, Wendy R.

OK.

1:52:48.10 --> 1:52:48.590

Stein, Wendy R.

That's all from us.

1:52:48.480 --> 1:52:48.860

Robert Amenn

So.

1:52:49.360 --> 1:52:49.550

Jeff Whitney

Uh.

1:52:48.680 --> 1:52:50.600

Judge Robert W Lehrburger

Mr On on anything else from you.

1:52:53.690 --> 1:52:56.590

Robert Amenn

I I have a question I don't if you were asking me, I didn't hear.

1:52:57.300 --> 1:53:0.430

Judge Robert W Lehrburger

No, I just saying anything else from you.

1:53:1.640 --> 1:53:2.700

Judge Robert W Lehrburger

Otherwise, we're adjourned.

1:53:1.780 --> 1:53:5.580

Robert Amenn

I would like I would like to understand.

1:53:5.690 --> 1:53:7.320

Robert Amenn

You're gonna document.

1:53:8.10 --> 1:53:11.980

Robert Amenn

It seems like Miss Stein's gonna make changes to the document based on your order.

1:53:12.610 --> 1:53:14.0

Robert Amenn

Do I get a chance to review it?

1:53:14.10 --> 1:53:15.260

Robert Amenn

And if we disagree, do we?

1:53:14.890 --> 1:53:15.500

Judge Robert W Lehrburger

Oh yeah.

1:53:15.310 --> 1:53:16.890

Robert Amenn

Can we can have another session?

1:53:15.570 --> 1:53:17.580

Judge Robert W Lehrburger

No, no, no. That's yeah.

1:53:17.590 --> 1:53:20.40

Judge Robert W Lehrburger

No, that's what I'm saying has to be done within a week.

1:53:20.430 --> 1:53:23.860

Judge Robert W Lehrburger

She's gonna provide a revised document.

1:53:23.870 --> 1:53:25.610

Judge Robert W Lehrburger

When do you think you can provide that miss time?

1:53:27.290 --> 1:53:28.690

Stein, Wendy R.

And today.

1:53:29.450 --> 1:53:29.880

Judge Robert W Lehrburger

OK.

1:53:30.70 --> 1:53:41.520

Judge Robert W Lehrburger

And then, uh Mr Amen, you should be prepared on Monday to respond with anything you think is not correct based on today.

1:53:41.810 --> 1:53:46.510

Judge Robert W Lehrburger

And you will then meet and confer with each other.

1:53:46.750 --> 1:53:58.580

Judge Robert W Lehrburger

And then by Thursday of next week, the parties will submit to me, Miss Stein will submit to me a document that is the proposed draft, with any redlining that you are not agreeing with.

1:54:8.790 --> 1:54:9.650

Judge Robert W Lehrburger

It's in the.

1:54:10.60 --> 1:54:11.330

Judge Robert W Lehrburger

It's in the problem, yes.

1:54:0.40 --> 1:54:17.680

Robert Amenn

And that that applies to the, the, the, the, the Protocol, the search terms and are are email language or the email like the I guess it's in the protocol the protocol will have that new language so so all language in the protocol document is subject to review and potential redlining not violating.

1:54:16.700 --> 1:54:19.190

Judge Robert W Lehrburger

Only only only if.

1:54:21.300 --> 1:54:21.420

Robert Amenn

Yes.

1:54:23.520 --> 1:54:25.560

Robert Amenn

That's fine and and the same.

1:54:19.200 --> 1:54:25.810

Judge Robert W Lehrburger

It doesn't accurately capture what was beside it today, in your view, we're not reading it.

1:54:25.820 --> 1:54:26.410

Judge Robert W Lehrburger

We're not.

1:54:26.420 --> 1:54:28.260

Judge Robert W Lehrburger

You're not reading negotiating anything.

1:54:28.860 --> 1:54:30.290

Robert Amenn

No, I I don't intend to.

1:54:30.600 --> 1:54:36.790

Robert Amenn

I just want to get clarification and then the same thing for the search terms because I like to look at them like like a final document.

1:54:36.800 --> 1:54:38.550

Robert Amenn

So we could review with to make sure that it occur.

1:54:38.560 --> 1:54:39.760

Robert Amenn

Represents what we discussed today.

1:54:44.520 --> 1:54:44.970

Robert Amenn

Yeah.

1:54:38.870 --> 1:54:45.100

Judge Robert W Lehrburger

Well, you will get a chance to see it and the same rules apply again, no renegotiating.

1:54:45.120 --> 1:54:45.810

Robert Amenn

Perfect. Perfect.

1:54:45.430 --> 1:54:52.90

Judge Robert W Lehrburger

But if there's something that's not correct from today, then I will deal with it, OK?

1:54:51.990 --> 1:54:53.250

Robert Amenn

Alright, that sounds good.

1:54:51.880 --> 1:54:58.810

Jeff Whitney

That, your Honor, I didn't want to interrupt anybody to do it, but I do have a I was hoping to get a quick clarification on the searches.

1:54:59.700 --> 1:54:59.860

Judge Robert W Lehrburger

Yeah.

1:55:0.360 --> 1:55:4.570

Jeff Whitney

And so I understand that I was looking at the search list.

1:55:4.580 --> 1:55:10.320

Jeff Whitney

I noticed that there is some syntax in there which is commonly used like quotations which.

1:55:12.190 --> 1:55:14.980

Jeff Whitney

Means you're searching for a phrase multiple keywords together.

1:55:15.420 --> 1:55:24.960

Jeff Whitney

I also noticed that there is exclamation point which I understand to represent a wild card could be any number of characters.

1:55:25.310 --> 1:55:29.160

Jeff Whitney

I just wanna make sure that when we're running the searches, we don't run into any issues.

1:55:29.300 --> 1:55:38.40

Jeff Whitney

Some tools use syntax a little bit differently and exclamationpoint might be a different character in a different depending on the tool.

1:55:38.50 --> 1:55:39.150

Jeff Whitney

So I just want to make sure that.

1:55:43.80 --> 1:55:43.300

Jeff Whitney

OK.

1:55:38.40 --> 1:55:47.660

Judge Robert W Lehrburger

Alright, you'll have you'll you'll have to talk that out just because obviously the the point is if there's a different character that accomplishes the same thing.

1:55:48.770 --> 1:55:48.940

Jeff Whitney

Yep.

1:55:48.410 --> 1:55:50.240

Judge Robert W Lehrburger

Uh, that then what's in the protocol?

1:55:50.250 --> 1:55:51.470

Judge Robert W Lehrburger

And then that's what should be used.

1:55:53.920 --> 1:55:55.730

Judge Robert W Lehrburger

OK, alright.

1:55:55.740 --> 1:55:58.270

Judge Robert W Lehrburger

I'm gonna leave the parties to do what they need to do.

1:55:58.280 --> 1:56:4.970

Judge Robert W Lehrburger

I will look forward to seeing a virtually finalized protocol next week.

1:56:5.100 --> 1:56:6.420

Judge Robert W Lehrburger

By Thursday. All right.

1:56:7.320 --> 1:56:7.900

Peerce, Marjorie

Thank your honor.

1:56:7.580 --> 1:56:8.60

Judge Robert W Lehrburger

OK.

1:56:8.400 --> 1:56:8.780

Tom Plunkett

Thank you.

1:56:8.530 --> 1:56:8.890

Robert Amenn

Thank you.

1:56:8.580 --> 1:56:8.960

Stein, Wendy R.

Thank you.

1:56:8.420 --> 1:56:9.150

Judge Robert W Lehrburger

We're adjourned.

1:56:9.460 --> 1:56:9.800

Judge Robert W Lehrburger

Thank you.